(12)

Supreme Court, U.S.
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No. 01-417

IN THE

Supreme Court of the United States

ROBERT J. DEVLIN,

Petitioner,

v.

ROBERT A. SCARDELLETTI, Trustee of the Transportation Communications International Union Staff Retirement Plan, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 7, 2001
CERTIORARI GRANTED DECEMBER 10, 2001

180 pp

TABLE OF CONTENTS

	Page
Docket Entries	1
First Amended Complaint for Declaratory and Injunctive Relief	24
Order Certifying Entry of Conditional Class Action and Directing Submission of Proposed Settlement and Notice to the Court	30
April 20, 1999 Letter from Arthur M. Wisehart to the Hon. J. Frederick Motz (with attachments)	34
May 12, 1999 Letter from Arthur M. Wisehart to the Hon. J. Frederick Motz	45
Plaintiffs' Motion to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine Whether The Proposed Settlement Should be Approved (with attachment)	47
Notice of Cross-Motion	56
Affidavit of Robert J. Devlin in Support of Cross-Motion (with attachment)	58
Order Certifying Entry of Conditional Class Action and Directing Submission of Proposed Settlement and Notice to the Court	72
Order Certifying Class and Setting Hearing on Proposed Settlement	76
Plaintiffs' Memorandum in Opposition to Robert Devlin's Motion to Intervene and Response to Cross-Motion	80
Affidavit of Brian A. Jones in Opposition to the Proposed Settlement	94
Objection of Charles O. Swasy	103
Notice of Objections to Proposed Settlement	104
October 7, 1999 Letter from James L. Bailey to Clerk of the U.S. District Court for the District of Maryland	117

TABLE OF CONTENTS—Continued

	Page
October 6, 1999 Letter from Desmond Frazer to Clerk of the U.S. District Court for the District of Maryland	119
October 4, 1999 Letter from Robert A. Parrish to Frank L. Monge, Clerk of the U.S. District Court for the District of Maryland	120
October 6, 1999 Letter from Cicero T. Lucas, Jr. to the Hon. J. Frederick Motz	122
October 4, 1999 Letter from Miriam E. Parrish to Frank L. Monge, Clerk of the U.S. District Court for the District of Maryland	123
September 30, 1999 Letter from James H. Groskopf to Clerk of the U.S. District Court for the District of Maryland	125
September 23, 1999 Letter from Andrew M. Hagan to the Hon. J. Frederick Motz	126
Declaration of Daniel C. Rudin	127
August 6, 1999 Memorandum for Counsel from the Hon. Paul W. Grimm to William Hanrahan	143
Declaration of Barbara Kraft	144
Transcript of Fairness Hearing Before the Hon. J. Frederick Motz, United States District Judge	151
Motion of Plaintiff Trustees for a Preliminary Injunction Pursuant to the All Writs Act	166
March 1, 2000 Order Granting Preliminary Injunction	170
March 15, 2000 Final Order	172
November 20, 2001 Memorandum re Issuance of Injunction Under All Writs Act	174
November 20, 2001 Order Granting Preliminary Injunction	177

U.S. DISTRICT COURT
DISTRICT OF MARYLAND
(BALTIMORE)

[Filed 10/14/97]

CIVIL DOCKET FOR CASE #: 97-CV-3464

ROBERT J. DEVLIN,

Petitioner,

v.

ROBERT A. SCARDELLETTI, Trustee of the Transportation Communications International Union Staff Retirement Plan, *et al.*,

Respondents.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
10/14/97	1	COMPLAINT filed; FILING FEE $ 120.00, RECEIPT # B144578. (jb) [Entry date 10/17/97]
10/17/97	3	SUMMONS(ES) (20 days) issued for Robert J. Devlin, Thomas deBarr, Donald A. Bobo, R. I. Kilroy, F. T. Lynch, Frank Mazur. (jb)
10/28/97	4	RETURN OF SERVICE executed as to Robert J. Devlin 10/20/97 Answer due on 11/9/97 for Robert J. Devlin (jl)
10/29/97	5	Local Rule 103.3 Certification of Defendant Robert J. Devlin (jl)

DATE	NO.	PROCEEDINGS
11/12/97	6	STIPULATION AND ORDER "EXTENDING" time for Robert Devlin to move or answer, set Answer deadline to 12/12/97 for Robert J. Devlin (signed by Chf Judge J. F. Motz 11/12/97) (c/m 11/12/97-jan) (jan)
12/15/97	15	MOTION with memorandum in support by Robert J. Devlin to Dismiss, or in the Alternative, to Transfer Case; Affidavit and Exhibit A. (c/s) (Corrected Copy with the Addition of Kahn, Smith & Collins, P.A. Firm's Signature Block as Local Counsel-Received 12/17/97) (jan) [Edit date 12/18/97]
12/19/97	17	MOTION with memorandum in support by *R. A. Scardelletti, et al* to Consolidate Cases JFM-97-3464 and JFM-95-52 (jan)
12/29/97	18	MEMORANDUM by *R. A. Scardelletti, et al* in opposition to [15-1] motion to Dismiss, [15-2] motion to Transfer Case by Robert J. Devlin and Attachment. (c/s) (jan)
1/7/98	19	COMBINED MEMORANDUM IN RESPONSE by Thomas deBarr to [17-1] motion to Consolidate Cases JFM-97-3464 and JFM-95-52 by R. A. Scardelletti and [15-2] motion to Transfer Case by Robert J. Devlin. (c/s) (jan)
1/8/98	20	RESPONSE by R. I. Kilroy, Donald A. Bobo, F. T. Lynch, Frank Mazur in opposition to [17-1] motion to Consolidate Cases JFM-97-3464 and JFM-95-52 by R. A. Scardelletti. (c/s) (jan)

DATE	NO.	PROCEEDINGS
1/9/98	24	MEMORANDUM by Robert J. Devlin in opposition to [17-1] motion to Consolidate Cases JFM-97-3464 and JFM-95-52 by R. Scardelletti; Affidavit and Exhibit A. (c/s) (AFFIDAVIT & EXHIBIT FILED SEPARATELY) (jan)
1/9/98	25	MEMORANDUM by Robert J. Devlin in support of his [15-1] motion to Dismiss, [15-2] motion to Transfer Case. (c/s) (jan)
1/13/98	—	Scheduling conference held before Motz, Chf J. (jan) [Entry date 01/14/98]
1/30/98	27	SUPPLEMENTAL MEMORANDUM by R. A. Scardelletti, et al in opposition to [15-1] motion to Dismiss, [15-2] motion to Transfer Case by Robert J. Devlin. (c/s) (jan)
3/16/98	32	MOTION with memorandum in support by *R. A. Scardelletti, et al* for Class Certification; Declaration and Exhibits A-B. (c/s) (jan) [Entry date 03/17/98]
3/26/98	33	ORDER granting [30-1] motion for Enlargement of Time in which to File Plaintiffs' Motion for Class Certification and Defendant Devlin's Opposition thereto, the briefing scheduling for the class certification motion set forth in the Court's 1/13/98 Order is therefore Modified. (signed by Chf Judge J. F. Motz 3/26/98) (c/m 3/26/98-jan) (jan)

DATE	NO.	PROCEEDINGS
4/1/98	34	REPLY MEMORANDUM by Robert J. Devlin to [27-1] opposition memorandumby R. A. Scardelletti; Reply Affidavit and Exhibits A-D. (c/s) (jan) [Entry date 04/02/98]
4/17/98	35	MOTION by Thomas deBarr to Extend Time to File a Response to Plaintiffs' Motion for Class Certification. (c/s) (jan)
4/17/98	36	MEMORANDUM by Robert J. Devlin in opposition to [32-1] motion for Class Certification by R. A. Scardelletti; Attachment and Affidavit. (c/s) (jan)
4/21/98	38	RESPONSE by Thomas deBarr to [32-1] motion for Class Certification by R. A. Scardelletti; Exhibits 1-2 and Declarations. (c/s) (jan)
5/1/98	39	REPLY by R. A. Scardelletti, Frank Ferlin Jr., Joel Parker, Don Bujold to defendant DeBarr's response to their [32-1] motion for Class Certification and Attachment (c/s) (jl)
5/1/98	40	REPLY by Robert J. Devlin in opposition to [32-1] motion for Class Certification by R. A. Scardelletti; Affidavit and Exhibit A (c/s) (jl)
5/4/98	41	MOTION by Robert J. Devlin to Substitute Attorney (jan) [Entry date 05/07/98]
5/4/98	41	ORDER granting [41-1] motion of Robert Devlin to Substitute Attorney terminated attorney Christyne L. Neff for Robert J. Devlin Added Travis M. Mastroddi (signed by Chf Judge J. F. Motz 5/4/98) (c/m 5/7/98-jan) (c/m) (jan) [Entry date 05/07/98]

DATE	NO.	PROCEEDINGS
6/5/98	—	Motion hearing held before (Motz, CJ) re: [15-1] motion to Dismiss by Robert J. Devlin, [32-1] motion for Class Certification by R. A. Scardelletti (REPORTER: Barbara Shaulis) (Written decision to be submitted by the Court) (bea) [Entry date 06/08/98]
6/5/98	—	ORAL MOTION in open court by Robert J. Devlin to amend complaint to name a new representative defendant in place of ROBERT J. DEVLIN—"GRANTED"—for reasons stated in open court. (Written order to be submitted by the Court) (bea) [Entry date 06/08/98]
6/5/98	42	ORDER granting [0-0] Oral motion to amend complaint. (signed by Chf Judge J. F. Motz 6/5/98) (c/m 6/5/98-gs)(jan) [Entry date 06/08/98]
6/5/98	43	ORDER denying [15-1] motion of Robert J. Devlin to Dismiss, and denying [15-2] motion to Transfer Case. (signed by Chf Judge J. F. Motz 6/5/98) (c/m 6/5/98-gs) (jan) [Entry date 06/08/98]
7/15/98	44	AMENDED COMPLAINT by R. A. Scardelletti, Frank Ferlin Jr., Joel Parker, Don Bujold , (Answer due 7/25/98 for Frank Mazur, for F. T. Lynch, for R. I. Kilroy, for Donald A. Bobo, for George Thomas Debarr) amending [1-1] complaint against Anthony Santoro Sr. (c/s) (jan) [Entry date 07/16/98]

DATE	NO.	PROCEEDINGS
7/15/98	—	Scheduling conference held before Motz, Chf J. (jan) [Entry date 07/16/98]
8/13/98	53	ANSWER by Donald A. Bobo, R. I. Kilroy, F. T. Lynch, Frank Mazur to First Amended Complaint. (c/s) (jan)
8/14/98	54	MOTION with memorandum in support by *R. A. Scardelletti, et al* to Consolidate Cases JFM-97-3464 and JFM-95-52. (c/s) (jan) [Edit date 08/14/98]
8/14/98	55	MOTION with memorandum in support by *R. A. Scardelletti, et al* For Class Certification; Declaration and Exhibits A-B. (c/s) (jan)
8/25/98	56	ORDER granting [56-1] motion of Anthony Santoro to Extend Time to respond to Plaintiff's request for consolidation and for submitting the joint request for early settlement to 10/2/98 (signed by Chf Judge J. F. Motz 8/25/98) (c/m 8/26/98-jan) (jan) [Entry date 08/26/98]
9/14/98	57	ANSWER by Anthony Santoro Sr. to amended complaint. (c/s) (jan) [Entry date 09/15/98]
9/14/98	57	COUNTERCLAIM by Anthony Santoro Sr. against R. A. Scardelletti, Frank Ferlin Jr., Joel Parker, Don Bujold. (c/s) (jan) [Entry date 09/15/98]
9/21/98	58	AMENDED ANSWER to Complaint by Anthony Santoro Sr.: amends [57-1] complaint answer by Anthony Santoro Sr.. (c/s) (jan)

DATE	NO.	PROCEEDINGS
9/24/98	59	RESPONSE by George Thomas Debarr to [55-1] motion For Class Certification by R. A. Scardelletti and Attachments. (c/s) (jan)
10/20/98	65	RESPONSE by Anthony Santoro Sr. to [54-1] motion to Consolidate Cases JFM-97-3464 and JFM-95-52 by R. A. Scardelletti. (c/s) (jan) [Entry date 10/28/98]
10/20/98	66	RESPONSE by Anthony Santoro Sr. to [55-1] motion For Class Certification by R. A. Scardelletti. (c/s) (jan) [Entry date 10/28/98]
10/23/98	67	REPLY by R. A. Scardelletti, Frank Ferlin Jr., Joel Parker, Don Bujold to response of Defendants to their [55-1] motion For Class Certificatio and to their [54-1] motion to Consolidate Cases JFM-97-3464 and JFM-95-52. (c/s) (dl)
10/30/98	—	Motion hearing held before C. J. Motz re: [55-1] motion For Class Certification by R. A. Scardelletti, [54-1] motion to Consolidate Cases JFM-97-3464 and JFM-95-52 by R. A. Scardelletti; argued and held sub curia (ER: Lauman). (ml)
12/31/98	68	MOTION with memorandum in support by *R. A. Scardelletti, et al* for Dismissal of Donald A. Bobo, R.I. Kilroy, F.T. Lynch and Frank Mazur. (c/s) (jan)
1/5/99	69	ORDER granting [68-1] motion of Plaintiff for Dismissal with Prejudice of Donald A. Bobo, R.I. Kilroy, F.T. Lynch and Frank Mazur. (signed by Chf Judge J. F. Motz 1/5/99) (c/m 1/5/99) (jan)

DATE	NO.	PROCEEDINGS
1/20/99	113	TRANSCRIPT filed [104-1] appeal by Robert J. Devlin for dates of October 30, 1999 (Filed separately) (ac) [Entry date 01/21/00]
2/9/99	70	ORDER CERTIFYING ENTRY OF CONDITIONAL CLASS ACTION AND DIRECTING SUBMISSION OF PROPOSED SETTLEMENT AND NOTICE TO THE COURT. (signed by Chf Judge J. F. Motz 2/9/99) (c/m 2/9/99) (jan)
4/7/99	71	ORDER REFERRING CASE to Magistrate Judge Paul W. Grimm for Settlement or other ADR Conference. (signed by Chf Judge J. F. Motz 3/30/99) (c/m 4/7/99-hsg) (jan)
4/23/99	72	BRIEF by Robert J. Devlin RE: Relationship between this litigation and the claims of Mr. Devlin previously asserted in the USDC for the Southern District of New York, and exhibits A-K. (c/s) (FILED SEPARATELY) (dl) [Entry date 04/26/99]
8/27/99	74	MOTION with memorandum in support by *R. A. Scardelletti, et al* to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine whether the Proposed Settlement should be Approved and Exhibits. (c/s) (jan) [Entry date 08/30/99] [Edit date 09/14/99]

DATE	NO.	PROCEEDINGS
9/10/99	75	CROSS MOTION with memorandum in support by Robert J. Devlin to Dismiss, Deny or Strike [74-1] motion to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine whether the Proposed Settlement should be Approved by R. A. Scardelletti, and to Intervene and Exhibits A-P. (c/s) (MEMORANDUM AND EXHIBITS FILED SEPARATELY) (jan) [Entry date 09/14/99] [Edit date 09/14/99]
9/14/99	76	ORDER GRANTING [74-1] motion of Plaintiff to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine whether the Proposed Settlement should be Approved as therein set forth. (signed by Chf Judge J. F. Motz 9/14/99) (c/m 9/15/99-jan) (jan) [Entry date 09/15/99]
9/24/99	77	MEMORANDUM by *R. A. Scardelletti, et al* in opposition to [75-1] motion to Dismiss, Deny or Strike [74-1] motion to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine whether the Proposed Settlement should be Approved by R. A. Scardelletti by Robert J. Devlin, [75-2] motion to Intervene by Robert J. Devlin. (c/s) (jan)

DATE	NO.	PROCEEDINGS
9/24/99	77	RESPONSE by *R. A. Scardelletti, et al* to [75-2] motion to Intervene by Robert J. Devlin, [75-1] motion to Dismiss, Deny or Strike [74-1] motion to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine whether the Proposed Settlement should be Approved by R. A. Scardelletti by Robert J. Devlin. (c/s) (jan)
10/1/99	78	CORRESPONDENCE by Don Bujold RE: Declaration of Megan Madia and exhibits 1 and 2. (c/s) (sf)
10/1/99	79	RESPONSE by A. Meaders in opposition to Settlement of Class Action and Settlement Hearing (c/s) (ms) [Entry date 10/04/99]
10/4/99	80	REPLY MEMORANDUM by *Robert J. Devlin, et al* in support of their [75-1] motion to Dismiss, Deny or Strike [74-1] motion to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine whether the Proposed Settlement should be Approved by R. A. Scardelletti [75-2] motion to Intervene; Exhibits and Reply Affidavit. (c/s) (cag)
10/4/99	81	CORRESPONDENCE by James H. Groskopf RE: Objection to the Settlement proposed in this case. (c/s) (jan) [Entry date 10/05/99]

DATE	NO.	PROCEEDINGS
10/4/99	82	CORRESPONDENCE by Thomas C. Robinson RE: Objection to the Settlement and Attachments. (c/s) (jan) [Entry date 10/05/99]
10/5/99	83	CORRESPONDENCE by Doyle W. Beat RE: Objection to Class Action Litigation. (c/s) (jan)
10/7/99	84	CORRESPONDENCE by Miriam E. Parrish RE: Objection to Proposed Settlement. (c/s) (jan)
10/7/99	85	CORRESPONDENCE by Robert A. Parrish RE: Objection to Proposed Settlement. (c/s) (jan)
10/12/99	86	CORRESPONDENCE by Desmond Fraser RE: Objection to Proposed Settlement. (c/s) (jan)
10/12/99	87	CORRESPONDENCE by James L. Bailey RE: Objection to Proposed Settlement. (c/s) (jan)
10/13/99	88	CORRESPONDENCE by Dorothy Deerwester RE: Objection to Proposed Settlement. (c/s) (jan)
10/13/99	89	CORRESPONDENCE by Thomas J. Hewson RE: Objection to Proposed Settlement. (c/s) (jan)
10/14/99	90	CORRESPONDENCE by Clay B. Wolfe RE: Objection to Proposed Settlement and Exhibits. (c/s) (jan) [Entry date 10/15/99]
10/18/99	91	MOTION by the Retiree Subclass to Quash Subpoenas and Notices of Deposition of Barbara Kraft and Claude Poulin. (jan)

DATE	NO.	PROCEEDINGS
10/18/99	92	ORDER GRANTING [91-1] motion of the Retiree Sublcass and its Counsel to Quash Subpoenas and Notices of Deposition of Barbara Kraft and Claude Poulin. (signed by Chf Judge J. F. Motz 10/15/99) (c/m 10/18/99) (jan)
10/18/99	93	CORRESPONDENCE by Kenneth B. Lane RE: Objection to Proposed Settlement. (c/s) (jan)
10/18/99	94	AFFIDAVIT by Brian A. Jones Re: Opposition to the Proposed Settlement and Exhibits A-F. (c/s) (jan) [Entry date 10/19/99]
10/18/99	95	NOTICE of by Robert J. Devlin of Objections to Proposed Settlement and Exhibits A-S. (c/s) (jan) [Entry date 10/19/99]
10/20/99	96	CORRESPONDENCE by Charles O. Swasy RE: Objection to Proposed Settlement. (c/s) (jan)
10/27/99	97	MOTION with memorandum in support by *R. A. Scardelletti, et al* in Limine to Strike Portions of the Affidavit of Brian A. Jones in Opposition to the Proposed Settlement. (c/s) (jan)
10/27/99	—	Settlement conference held before Grimm, USMJ. (jan) [Entry date 11/03/99]
10/27/99	—	CASE NO LONGER REFERRED TO Magistrate Judge Paul W. Grimm. (jan) [Entry date 11/03/99]
11/4/99	98	PLAINTIFF'S PRE-HEARING MEMORANDUM in support of Settlement; Exhibits 1-7, and Declarations with Exhibits.

DATE	NO.	PROCEEDINGS
		(c/s) (EXHIBITS & DECLARATIONS FILED SEPARATELY) (Original Declaration of Mary Sue Dickinson and Exhibits—Received 11/5/99) (jan) [Edit date 11/05/99]
11/9/99	99	THE DEFENDANT ACTIVE SUBCLASS' PRE-HEARING MEMORANDUM in Support of Class Action Settlement; Declaration and Exhibits A-C. (c/s) (jan)
11/10/99	100	MEMORANDUM by Robert J. Devlin in opposition to [97-1] motion in Limine to Strike Portions of the Affidavit of Brian A. Jones in Opposition to the Proposed Settlement by R. A. Scardelletti; Exhibit A, and Affidavit with Exhibits A-D. (c/s) (jan)
11/10/99	101	PRE-HEARING MEMORANDUM by Anthony Santoro Sr., The Retiree Subclass in support of the proposed Settlement and Exhibit A. (c/s) (jan)
11/12/99	102	MOTION with memorandum in support by Robert J. Devlin for Preliminary Injunction, in Limine by striking the Declarations and accompanying Memoranda, and disqualify Kenneth M. Johnson and Barbara Kraft as counsel and exhibits A and B and 1, Affidavit of Robert J. Devlin, and exhibits 1-4, and deposition of Claude Poulin. (c/s) (file separately) (sf)
11/12/99	103	CORRECTED DECLARATION OF DANAIEL C. RUDIN and Exhibits 1-2. (c/s) (EXHIBIT 1—SEALED) (jan) [Entry date 11/15/99]

DATE	NO.	PROCEEDINGS
11/12/99	—	Motion hearing re: Fairness Hearing. The Court agreed that the settlement was adequate. (Court Reporter: Lisa Bankins) (kam) [Entry date 12/07/99]
12/1/99	104	NOTICE OF APPEAL and attachment Exhibit A, by Robert J. Devlin . Fee Status: (Filing fee paid)(c/s) (ac) [Entry date 12/08/99]
12/6/99	105	Transcript of proceedings held before the Court on November 12, 1999 (FILED SEPARATELY) (ac) [Entry date 12/08/99]
12/8/99	—	Notice of appeal and certified copy of docket to USCA: [104-1] appeal by Robert J. Devlin (Appeal forms mailed to counsel) (ac)
12/9/99	106	ORDER "RETAINING" record for the use in ongoing litigation, pursuant to Rule 11(e) FRAP, with exceptions as therein set forth. (signed by Chf Judge J. F. Motz) (c/m 12/9/99 akc) (ac)
12/16/99	107	DESIGNATION by Don Bujold, Joel Parker, Frank Ferlin Jr., R. A. Scardelletti of record on appeal and attachments. (attachments filed separately) (ac)
12/16/99	108	AMENDED ORDER "RETAINING" record for the use in ongoing litigation, pursuant to Rule 11(e) FRAP, with exceptions as therein set forth. (signed by Chf Judge J. F. Motz) (c/m 12/16/99 akc) (ac)
12/17/99	—	USCA Case Number Re: [104-1] appeal by Robert J. Devlin USCA NUMBER: 99-2619 (Case Mgr. B. Rowe) (ac)

DATE	NO.	PROCEEDINGS
12/17/99	—	USCA Case Number Re: [104-1] appeal by Robert J. Devlin USCA NUMBER: 99-2619 (Case Mgr. B.Rowe) (ac)
12/28/99	—	USCA Case Number Re: [104-1] appeal by Robert J. Devlin USCA NUMBER: 99-2619 (Case Mgr. B. Rowe) (ac)
12/30/99	109	DESIGNATION by Robert J. Devlin and the Retired Employees Protective Association of record on appeal, Exhibits A thru D and attachments. (Attachments filed separately) (ac)
1/3/00	110	ADDITIONAL DESIGNATION by Robert J. Devlin of record on appeal and attachments. (attachments filed separately) (ac)
1/3/00	111	DESIGNATION of defendant Retiree Subclass of record on appeal (ac) [Entry date 01/14/00]
1/7/00	112	Correspondence Re: corrections to DESIGNATION by Robert J. Devlin of record on appeal (ac) [Entry date 01/14/00]
1/20/00	113	TRANSCRIPT filed [104-1] appeal by Robert J. Devlin for dates of October 30, 1999 (Filed separately) (ac) [Entry date 01/24/00]
1/31/00	114	MOTION with memorandum in support by *R. A. Scardelletti, et al* for Preliminary Injunction Pursuant to the All Writs Act and Exhibits A-H. (c/s)_ (jan)
2/4/00	115	PLAINTIFFS' SUPPLEMENTAL MEMORANDUM Concerning the Objection of Clay B. Wolfe and Attachment. (c/s) (jan)

DATE	NO.	PROCEEDINGS
2/4/00	116	MOTION by *R. A. Scardelletti, et al* for Entry of an Order Clarifying the Court's Rulings on Various Non-Party Motions. (c/s) (jan)
2/10/00	117	RESPONSE OF THE RETIREE SUB-CLASS REPRESENTATIVE to [115-1] support memorandum; [116-1] motion for Entry of an Order Clarifying the Court's Rulings on Various Non-Party Motions by R. A. Scardelletti. (c/s) (jan)
2/14/00	118	RESPONSE by Clay B. Wolfe to [115-1] memorandum by R. A. Scardelletti to Objection of Clay B. Wolfe. (c/s) (CORRECTED COPY—Received 2/11/00) (das) [Edit date 02/22/00]
2/14/00	119	MEMORANDUM by Robert J. Devlin and the Retired Employees Protective Association (REPA) in opposition to [114-1] motion for Preliminary Injunction Pursuant to the All Writs Act by R. A. Scardelletti, and Exhibits A-N. (c/s) (EXHIBITS FILED SEPARATELY) (das)
2/15/00	120	RESPONSE by George Thomas Debarr to [114-1] motion for Preliminary Injunction Pursuant to the All Writs Act by R. A. Scardelletti. (c/s) (jan)
2/16/00	121	MEMORANDUM IN RESPONSE by R. A. Scardelletti, Frank Ferlin Jr. to Retiree Subclass Representative's Objection to Settlement (c/s) (cag)

DATE	NO.	PROCEEDINGS
2/18/00	122	MOTION by Robert J. Devlin to supplement the record on appeal (ac) [Entry date 02/22/00] [Edit date 02/22/00]
2/18/00	123	ORDER granting [124-1] motion to supplement the record on appeal and doarecting Mr.Wisehart provide copies of those letters to the Clerk (signed by Chf Judge J. F. Motz) (c/m by chambers 2/18/00) (ac) [Entry date 02/22/00] [Edit date 02/22/00]
2/22/00	124	RESPONSE by George Thomas Debarr to Plaintiff Trustees' [115] Supplemental Memorandum Concerning the Objection of Clay B. Wolfe and Exhibit. (c/s) (jan) [Edit date 02/22/00]
2/22/00	125	MEMORANDUM by Robert J. Devlin in opposition to [116-1] motion for Entry of an Order Clarifying the Court's Rulings by R. A. Scardelletti; Affidavit and Exhibits A-E. (c/s) (AFFIDAVIT & EXHIBITS FILED SEPARATELY) (jan) [Edit date 02/22/00]
2/23/00	126	REPLY MEMORANDUM by *R. A. Scardelletti, et al* in support of their [114-1] motion for Preliminary Injunction Pursuant to the All Writs Act. (c/s) (jan)
3/9/00	127	REPLY of Retiree Subclass Representative to Plaintiffs' Memorandum in Response to Retiree Class Representative's Objection to Settlement. (c/s) (jan)
3/10/00	—	Motion hearing held before (Motz, CJ)—ARGUED—Oral opinion rendered by the

DATE	NO.	PROCEEDINGS
		Court enjoining Devlin in suit pending in the Southern District of New York (Court Reporter: M.ZAJAC) (ba) [Entry date 03/13/00]
3/15/00	128	ORDER DENYING Cross-Motion of Robert J. Devlin, filed on 9/10/99 to intervene as a party to this action; DENYING AS MOOT the Motions for other relief contained in the cross-motion; and DENYING AS MOOT the Motions for a Preliminary Injunction for other relief filed by Robert J. Devlin on 11/12/99. (signed by Chf Judge J. F. Motz 3/15/00) (c/i 3/15/00) (jan)
3/15/00	129	ORDER GRANTING [114-1] motion of Plaintiff Trustees for Preliminary Injunction Pursuant to the All Writs Act as therein set forth. (signed by Chf Judge J. F. Motz 3/15/00) (c/i 3/15/00) (jan)
3/15/00	130	FINAL ORDER DIRECTING the Settlement Agreement is approved as therein set forth; and DISMISSING this action with prejudice. (signed by Chf Judge J. F. Motz 3/15/00) (c/i 3/15/00) (MICROFILMED 3/15/00) (jan) [Edit date 03/15/00]
3/15/00	—	Case closed (jan)
3/15/00	131	Transcript of proceedings held before the Court on March 10, 2000 (FILED SEPARATELY) (jan) [Entry date 03/16/00]
3/22/00	132	MOTION with memorandum in support by Robert J. Devlin for a Stay Pending Appeal; Affidavit and Exhibits A-F. (c/s) (EXHIBITS FILED SEPARATELY) (jan)

DATE	NO.	PROCEEDINGS
3/30/00	133	MOTION by *R. A. Scardelletti, et al* for an Order to Show Cause and Exhibits A-F. (c/s) (jan)
4/3/00	134	NOTICE OF APPEAL by Robert J. Devlin and the Retired Employees Protective Association ("REPA") and Exhibits A thru D) Fee Status: (Filing fee paid)(c/s) (ac) [Entry date 04/04/00]
4/4/00	—	Notice of appeal and certified copy of docket to USCA: [134-1] appeal by Robert J. Devlin (Appeal forms mailed to counsel) (ac)
4/4/00	135	MEMORANDUM by Robert J. Devlin in opposition to [133-1] motion for an Order to Show Cause by R. A. Scardelletti; Affidavit and Exhibits A-C. (c/s) (AFFIDAVIT AND EXHIBITS FILED SEPARATELY) (jan)
4/6/00	136	RESPONSE by *R. A. Scardelletti, et al* in opposition to [132-1] motion for a Stay Pending Appeal by Robert J. Devlin. (c/s) (jan)
4/13/00	137	ORDER (copy) (U.S. COURT OF APPEALS, FOR THE FOURTH CIRCUIT) "CONSOLIDATING" cases 99-2619 and 00-1311 for purposes of briefing and oral argument. (ac)
4/13/00	—	USCA Case Number Re: [134-1] appeal by Robert J. Devlin USCA NUMBER: 00-1411 (Case Mgr. B.Rowe) (ac)

DATE	NO.	PROCEEDINGS
4/17/00	138	SUPPLEMENTAL MEMORANDUM by *R. A. Scardelletti, Frank Ferlin Jr., et al* in support of their [133-1] motion for an Order to Show Cause (c/s) (cag)
4/17/00	139	REPLY MEMORANDUM by Robert J. Devlin and REPA in support of their [132-1] motion for a Stay Pending Appeal and Exhibits. (c/s) (cag) [Entry date 04/18/00]
4/25/00	140	TRANSCRIPT filed [134-1] appeal by Robert J. Devlin for dates of April 20, 2000 (Filed separately) (ac)
4/26/00	141	NOTICE OF APPEAL by Robert J. Devlin and the Retired Employees Protective Association ("REPA") and Exhibit A. Fee Status: (Filing fee paid) (c/s) (ac) [Entry date 04/27/00] [Edit date 04/27/00]
4/27/00	—	Notice of appeal and certified copy of docket to USCA: [141-1] appeal by Robert J. Devlin (Appeal forms mailed to counsel) (ac)
5/4/00	—	USCA Case Number Re: [141-1] appeal by Robert J. Devlin USCA NUMBER: 00-1525 (Case Mgr. B. Rowe) (ac)
8/22/01	142	JUDGMENT OF USCA (certified copy) affirming in part, reversing in part the judgment of the District Court, and remanding case for further proceedings, copy of opinion attached herto. Re: [141-1] appeal by Robert J. Devlin, [134-1] appeal by Robert J. Devlin (c/s) (ko)

DATE	NO.	PROCEEDINGS
8/23/01	143	ORDER of the USCA denying cross-bills of costs. (c/s) (ko)
8/28/01	—	Case reopened (jan)
9/17/01	144	LETTER/MOTION by *Don Bujold, et al* for Leave to File Memorandum in Support of Injunction Pursuant to The All Writs Act and Proposed Memorandum. (c/s) (jan)
9/25/01	145	AFFIDAVIT by Robert J. Devlin Re: Response to the Letter of the Court Dated 8/27/01 and Exhibits A-E. (c/s) (FILED SEPARATELY) (jan)
9/26/01	146	SEALED AFFIDAVIT by Arthur M. Wisehart (c/s) (cag)
10/10/01	147	REPLY MEMORANDUM of Plaintiff Trustts in support of Injunction Pursuant to the All Writs Act. (c/s) (jan)
10/10/01	148	MOTION by Robert J. Devlin to Seal Affidavit of Arthur M. Wisehart. (c/s) (jan) [Entry date 10/11/01]
11/20/01	149	MEMORANDUM (signed by Judge J. F. Motz 11/20/01) (c/i 11/20/01) (jl)
11/20/01	150	ORDER granting [114-1] motion of plaintiff for Preliminary Injunction Pursuant to the All Writs Act (signed by Judge J. F. Motz 11/20/01) (c/i 11/20/01) (jl)
12/17/01	151	ORDER of the US Supreme Court GRANTING a writ of certiorari (c/s) (ko)
12/20/01	152	Interlocutory NOTICE OF APPEAL by Robert J. Devlin, Thomas J. Hewson . with Exhibits A & B. Fee Status: (Filing Fee Paid) (c/s) (ko) [Entry date 12/21/01]

DATE	NO.	PROCEEDINGS
12/21/01	—	Notice of appeal and certified copy of docket to USCA: [152-1] appeal by Thomas J. Hewson, Robert J. Devlin (c/m) (ko)
1/2/02	—	Case closed (jan) [Entry date 01/14/02]
1/8/02	153	DESIGNATION of record on appeal filed by *Robert J. Devlin et al.* (FILED SEPARATELY) (ko) [Edit date 01/08/02]
1/14/02	—	USCA Case Number Re: [152-1] appeal by Thomas J. Hewson, Robert J. Devlin USCA NUMBER: 02-1013 (Case Manager: Deborah Daniel) (ko)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R.A. SCARDELLETTI,
FRANK FERLIN, JR.,
JOEL PARKER,
3 Research Place
Rockville, Maryland 20850
Montgomery County

and

DON BUJOLD
285 D St. Laurent Boulevard
Ottawa, Ontario, Canada K1G 4Z7
As trustees of the Transportation Communications
International Union Staff Retirement Plan
Plaintiffs,

v.

ANTHONY SANTORO, SR.,
8028 High Point Road
Baltimore, MD 21234
Baltimore County

GEORGE THOMAS DEBARR
2400 Elsworth Way #1C
Frederick, MD 21702
Frederick County
Individually and as representatives of a class of
all persons similarly situated,

and

DONALD A. BOBO,
7517 Coddle Harbor Lane
Potomac, Maryland 20854
Montgomery County

R. I. KILROY,
3134 Evergreen Way
Ellicott City, MD 21042
Baltimore County

F.T. LYNCH,
9208 Oaklyn Terrace
Potomac, Maryland 20854
Montgomery County

FRANK MAZUR
229 South Kenogami Avenue
Thunder bay, Ontario, Canada
PB7 4S2

Defendants.

FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This action is brought on behalf of the Transportation Communications International Union Staff Retirement Plan (the "Plan") pursuant to sections 502(a)(1)(B) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132(a)(1)(B) and 1132(a)(3), and 28 U.S.C. §§ 2201 and 2202, to obtain appropriate equitable and declaratory relief to adjudicate the rights of the participants in the Plan and their beneficiaries to receive benefits under certain amendments made to the Plan.

* * *

Class Action Allegations

12. Plaintiffs bring to this action against defendants Santoro and DeBarr individually and as representatives of a class including all participants of the Plan who first earned Credited Service under the Plan before May 15, 1993 (the "Class") and their beneficiaries.

13. The members of the Class are so numerous that joinder of all class members is impracticable. The Class exceeds 700 members, including approximately 402 retired participants, 123 terminated vested participants, 206 active participants, and their beneficiaries.

14. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether an amendment to the Plan adopted on October 13, 1990, and effective on January 1, 1991 (the "COLA amendment"), providing for an automatic cost of living adjustment ("COLA") to a Plan participant's retirement benefit on every third anniversary of his retirement date, should be declared null and void as of the date of its adoption, on account of its having been adopted as the result of a breach of fiduciary duty committed by defendants Bobo, Kilroy, Lynch, and Mazur; and,

(b) whether an October 6, 1997 amendment to the Plan, which eliminated the increases in monthly benefit amounts put into place under the COLA amendment and eliminated all future COLA increases for all participants who separated from service prior to January 1, 1991, is a lawful amendment.

15. The Class is composed of all participants in the Plan who first earned Credited Service, as that term has been

defined in the Plan from time to time, prior to May 15, 1993, and their beneficiaries, as that term is defined in ERISA section 3(8), 29 U.S.C. § 1002(8).

16. The Class is composed of two Subclasses.

(a) The first Subclass consists of members of the Class who retired or separated from service with TCU before November 1, 1995 and their beneficiaries (the "Retiree Subclass"). The Retiree Subclass contains approximately 402 retired participants and 72 terminated vested participants.

(b) The second Subclass consists of members of the Class who earned any Credited Service under the Plan on or after November 1, 1995, and their beneficiaries (the "Active Sublcass"). The Active Subclass contains approximately 245 participants.

17. Defendant Santoro is a member of the Class and of the Retiree Subclass, and his claims and defenses are typical of the claims and defenses of the Retiree Subclass. Plaintiffs allege, on information and belief, that Santoro is familiar with the issues raised by the instant complaint, and will vigorously represent the interests of the Retiree Subclass.

18. Defendant DeBarr is a member of the Class and of the Active Subclass, and his claims and defenses are typical of the claims and defenses of the Active Subclass. Defendant DeBarr is the Executive Director/Operations of TCU. As an active employee, he is aware of the pending litigation styled *Scardelletti v. Bobo*, Civil Action No. 95-52 JFM (the "*Bobo* litigation") and familiar with the issues presented therein. Plaintiffs allege, on information and belief, that DeBarr will vigorously represent the interest of the Active Subclass.

19. Certification of the Class and the Subclasses is appropriate under Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or

varying adjudications of the Plan's obligations with regard to the COLA amendment and the October 6, 1997 amendment. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2), because the Plan amendments at issue act on grounds generally applicable to the Class and the Subclasses, making declaratory and injunctive relief appropriate on a class-wide basis.

* * *

Claim

(Declaratory Judgment and Injunctive Relief)

36. Plaintiffs hereby incorporate by reference paragraphs 1 through 35 as if set forth in full herein.

37. As a direct consequence of the fiduciary breaches committed by defendants Bobo, Kilroy, Lynch, and Mazur, the Plan has been damaged, and will be damaged in the future, by the payment of benefits provided under the COLA amendment. Plaintiffs are therefore entitled under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), to final declaratory and injunctive relief declaring the COLA amendment void from its inception, and of no force and effect, as to all members of the Class, and as to defendants Bobo, Kilroy, Lynch, and Mazur.

38. In the alternative, with respect to members of the Retiree Subclass, the benefits provided by the COLA amendment are not "accrued benefits" or a "retirement-type subsidy" within the meaning of ERISA section 204(g), and may be lawfully eliminated by an amendment to the Plan. Plaintiffs are entitled to final declaratory and injunctive relief declaring that the October 6, 1997 amendment is a valid and enforceable amendment eliminating benefits provided by the COLA amendment for the members of the Retiree Subclass.

39. In the alternative, with respect to members of the Active Subclass, the COLA benefits are not subject to

reduction by a Plan amendment on account of being "accrued benefits" within the meaning of ERISA section 204(g). However, because the COLA amendment was adopted as the direct result of a fiduciary breach causing damages to the Plan by the payment of benefits provided under the COLA amendment, Plaintiffs are entitled under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), to final declaratory and injunctive relief declaring the COLA amendment void from its inception, and of no force and effect, as to all members of the Active Subclass, and as to defendants Bobo, Kilroy, Lynch, and Mazur.

Relief

WHEREFORE, Plaintiffs pray that the court enter an order:

1. Declaring the COLA amendment null and void as of the date of its adoption and eliminating any obligations thereunder as to all members of the Class and defendants Bobo, Kilroy, Lynch, and Mazur;

2. In the alternative, (a) declaring that the October 6, 1997 amendment is a valid and enforceable Plan amendment and that under the terms of that amendment, the Plan has no obligation, on and after November 1, 1997, to provide COLA benefits to members of the Retiree Subclass; and, (b) declaring the COLA amendment null and void as of the date of its adoption and eliminating any obligations thereunder to members of the Active Subclass and defendants Bobo, Kilroy, Lynch, and Mazur.

3. Ordering such further relief as the court deems appropriate.

Dated: July 14, 1998

/s/ William F. Hanrahan
WILLIAM F. HANRAHAN
(Federal Bar No. 012248)
LONIE A. HASSEL
(Federal Bar No. 012246)
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1701 Pennsylvania Ave., N.W.
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(202) 857-0620

Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

C.A. No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

ORDER CERTIFYING ENTRY OF CONDITIONAL CLASS ACTION AND DIRECTING SUBMISSION OF PROPOSED SETTLEMENT AND NOTICE TO THE COURT

Upon consideration of plaintiffs' motion for class certification and the responses thereto of the putative class representatives George Thomas DeBarr and Anthony Santoro, Sr., and in accordance with the Opinion granting said motion filed concurrently herewith, it is, subject to alteration or amendment under Fed. R. Civ. P. 23(c) conditionally ORDERED:

1. *Class Certification.* This action, titled *R.A. Scardelletti, et al. v. Anthony Santoro, Sr., et al.*, shall be maintained as a class action. This conditional certification is granted for purposes of the parties' attempts to arrive at a settlement which could subsequently be certified and noticed as a settlement class action. For purposes of this conditional certification, the action shall be maintained on behalf of the following class of defendants:

> All active, terminated vested and retired participants and their beneficiaries in the Transportation Communications International Union Staff Retirement Plan.

> This class shall be further divided into subclasses denominated Subclass 1 and Subclass 2.

Subclass 1 shall consist of two parts, as follows:

> Subclass 1-A will consist of all class members who retired on or after January 1, 1991 and will suffer a loss in their benefits in the event this Court grants the equitable relief sought in the complaint.
>
> Subclass 1-B will consist of all class members who retired prior to January 1, 1991 (and their beneficiaries) whose retirement benefits were reduced as a result of the October 1997 plan amendment eliminating the automatic COLA adjustment to their benefits.

Subclass 2 shall consist of all class members who, based on certain assumptions regarding future compensation and years of service as well as the March, 1998 resolution of the Executive Council of the Transportation Communications International Union, would likely benefit in the event this Court grants the equitable relief sought in the complaint.

The following persons shall be excluded from the class: R. A. Scardelletti, Frank Ferlin, Jr., Joel Parker, Don Bujold, Mitchell M. Kraus, Donald A. Bobo, R. I. Kilroy, F. T. Lynch and Frank Mazur.

The Court and the parties agree that the passage of time and unanticipated events may affect the determination of whether particular class members are in Subclass 1 or Subclass 2 at any given point in time. The Court and the parties agree that any settlement reached in this action may require a modification of the definition of the two subclasses for purposes of notice and final certification. The Court and the parties also agree that, should the parties not succeed in reaching a settlement, or should the Court determine not to approve a proposed settlement, the definitions of the class and the two subclasses may be revised.

2. *Class Representative: Class Counsel.* Subject to further order of the Court, Anthony Santoro, Sr. is designated class representative of Subclass 1. George Thomas DeBarr is designated class representative of Subclass 2. Barbara Kraft is designated counsel for Subclass 1. Kenneth M. Johnson is designated as counsel for Subclass 2.

3 *Submission of proposed settlement and notice to the Court.* By March 26, 1999, counsel and the class representatives shall submit to the Court their proposed settlement of this case and a proposed *Notice of Pendency of Class Action and Hearing on Proposed Settlement* in a form to be agreed upon by the parties. The Court will thereafter determine whether the proposed settlement appears to be within the range of reasonableness and whether it should be submitted to class members for their approval. The Court will also approve, disapprove or modify the proposed *Notice* and indicate the date for hearing on the proposed settlement.

4. *Notice.* Class counsel and plaintiffs' counsel shall, within 15 days after the Court's approval of the *Notice of Pendency of Class Action and Hearing on Proposed Settlement*, cause to be mailed to all class members who can be identified through reasonable efforts a copy of said *Notice* as approved by the Court. The *Notice* will describe the proposed settlement reached by the parties and the class representatives and will notify class members of the date, time and place of the hearing on the proposed settlement and their opportunity to attend the hearing and submit written comments.

5. *Hearing on proposed settlement.* Upon certification to the Court by counsel that the *Notice* has been mailed to all class members, the Court will hold a hearing on the proposed settlement on a date to be set by the court, which date will be set forth in the *Notice*. The purpose of the hearing will be to consider whether the settlement should be given final approval by the Court. Objections to the proposed settlement

will be considered if filed in writing with the Clerk on or before the date 10 days prior to the hearing date. Class members may be heard orally in support of or in opposition to the proposed settlement provided they have notified the Clerk, in writing received by the date 10 days prior to the hearing date, of their intention to appear at the hearing. Counsel and the class representatives will respond at the hearing to any objections to the proposed settlement raised by class members.

6. *Further orders of the Court.* The Court will consider the objections to the proposed settlement raised by class members at the hearing or in written comments, and will thereafter make a final ruling on the proposed settlement. In the event the Court does not approve the proposed settlement, the Court will entertain the parties' written submissions on any remaining matters concerning class certification and discovery, issue amended class certification and discovery orders, if any, and set the case for trial.

February 9, 1999

/s/ _____

UNITED STATES DISTRICT JUDGE

WISEHART & KOCH
19 West 44th Street
Suite 412
New York, New York 10036-5993
(212) 730-0044
FAX (212) 730-0047

Arthur M. Wisehart
---
501 E. Cascade Valley Road
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Francis E. Koch
1922-1978
229 Court Street
Hoboken, New Jersey 07030
(201) 420-1980

By Federal Express

April 20, 1999

Hon. J. Frederick Motz
United States District Judge
District of Maryland
United States Courthouse
Room 510
101 W. Lombard Street
Baltimore, MD 21201

Re: *Scardelletti v. Santoro, Sr.*, No. JFM-97-3464

Dear Judge Motz:

This is to advise that the relationship between the above entitled litigation before Your Honor and the claims of Mr. Devlin as previously asserted in the United States District Court for the Southern District of New York concerning the elimination of the cost of living adjustment ("COLA") in the TCU Retirement Plan was referred to by Judge Oakes in his opinion for the United States Court of Appeals for the Second Circuit on April 13, 1999, along with other issues not involved in the litigation before Your Honor. Judge Oakes' opinion is attached as it specifically refers to the litigation before Your Honor at pages 23-25. (Exhibit A attached hereto.)

The Second Circuit's decision was based on the finding that at the time that the United States District Court for the Southern District of New York made its initial ruling, the COLA amendment had not yet been repealed.

Judge Oakes concluded that since the same COLA issue was being addressed by Your Honor that "It seems eminently sensible that the Maryland District Court should resolve fully the COLA amendment issue." (Exhibit A, p. 24.) In his opinion, Judge Oakes also indicated that Mr. Devlin could intervene to resolve his claims with regard to the COLA Amendment in the litigation before Your Honor pursuant to Federal Rule of Civil Procedure 24(a). (Exhibit A, p. 25).

It is therefore respectfully requested that Mr. Devlin be permitted to intervene in the case *Scardelletti v. Santoro, Sr., No. JFM-97-3464* pursuant to Fed. R. Civ. P. 24 (a) or in the alternative Rule 24(b). Rule 24(a) provides that a party shall be allowed to intervene in an action if they claim an interest relating to the property or transaction that is the subject of the action and he is so situated that the disposition of the action as a practical matter may impair or impede his ability to protect that interest, unless his interest is adequately represented by the existing parties. Fed. R. Civ. P. 24(a).

Recent developments have come to Mr. Devlin's attention in connection with the case before Your Honor that make it imperative that he follow the suggestion in the opinion by Judge Oakes and now seek to intervene pursuant to Rule 24(a) to protect his interests and those of the approximately 400 members of the Retired Employees Protective Association ("REPA") whom he represents as their President.

The qualifications of Mr. Devlin to represent such interests in this case have already been acknowledged by the plaintiffs in their Complaint for Declaratory and Injunctive Relief initiating the pending litigation dated October 17, 1997. (Exhibit B, ¶ 17, annexed hereto.)

* * *

Finally, we respectfully request that a telephonic pre-trial conference pursuant to Fed. R. Civ. P. 16 be granted so that we may discuss the issues and terms relating to such intervention in connection with the present procedural posture of the case.

Respectfully submitted,

/s/ Arthur M. Wisehart
ARTHUR M. WISEHART
Attorney for Robert J. Devlin,
President
Retired Employees' Protective
Association

Retired Employees Protective Association (REPA)
342 Fifth Avenue, River Edge, N.J. 07661-1113
(201) 261-1788 Fax (201) 599-2102

January 26, 1999

BY FAX (202) 328-7030 & US MAIL

Barbara Kraft, Esq.
Beins, Axelrod & Kraft
Suite 704
1717 Massachusetts Avenue, NW
Washington, DC 20036-2001

Re: *Scardelletti, et al., v. Santoro, et al.*,
C.A. No. JFM-97-3464

Dear Ms. Kraft

Thank you for furnishing a copy of your letter of January 22, 1999, to William F. Hanrahan, Esq., Counsel for plaintiff in which you seek plaintiffs response to your alternative settlement proposal of December 10, 1998.

You know that the COLAs cannot be taken away by Plan amendment because no application was ever made to or approval granted by the Secretary of the Treasury. This is REPA's position now pending in the U.S. Court of Appeals for the Second Circuit. This is also what you stated to be your position as well as plaintiffs' being barred by laches and estoppel from asserting a claim for relief in the Baltimore Court and that the Baltimore court is without jurisdiction.

You already know REPA's position that the current TCU proposal and your counter-proposal for settlement are simply unacceptable. It further is unacceptable that you would engage in any such settlement discussions while the COLA matter is pending in the Second Circuit seeking complete restitution of all benefits denied to retirees.

You are requested on behalf of approximately 400 members of REPA that you make it clear that you do not

represent us and that any such settlement discussions should be tabled until after we have the benefit of the Second Circuit's decision on the currently pending appeal. Anything less would be contrary to the interests of TCU Staff Retirement Plan participants, and REPA will hold you accountable for any injury that may result.

Yours truly,

/s/ R. J. Devlin
Robert J. Devlin, President

CC: Arthur M. Wisehart, Esq.

Retired Employees Protective Association (REPA)
342 Fifth Avenue, River Edge, N.J. 07661-1113
(201) 261-1788 Fax (201) 599-2102

December 22, 1998

Ms. Barbara Kraft, Esq.
Beins, Axelrod & Kraft
Suite 704
1717 Massachusetts Avenue, NW
Washington, D.C. 20036-2001

Re: *Scardelletti v. Santoro*, C.A. No. JFM-97-3464

Dear Ms. Kraft:

Thank you for your letter of December 16, 1998, and the proposed Order for Judge Motz for conditional certification and your alternative settlement proposal.

While I will not quarrel with your understanding of our November 29, 1998, conversation, there is one aspect you did not address. That is, you advised that you had retained an actuary to make a cost evaluation of TCU's offer and you would furnish a copy to me. I would appreciate receiving a copy of this evaluation and the name of the Actuary who prepared it.

Your proposed offer of settlement, in view of the prior offer in settlement of 95-52, which I understand is now consolidate with 97-3464, is unbelievably adverse to our interests and appears to me to be a "Sweetheart deal." It also rings of a scheme to hold out a lump sum settlement in order to coerce the vote of aging and frightened retirees who are struggling to survive on drastically reduced retirement benefits. In their anxiety, the lump sum amount might appear to be a temporary solution to meet their mounting unpaid grocery and rent bills or saving them the necessity of moving from their lifetime homes to take up residence with children or to some less expensive accommodation. These fears and

anxieties are not fantasy, but are actual heart wrenching facts expressed personally to me. Some have even expressed the wish that death arrives before the next embarrassment does.

I am also concerned that this proposed settlement is an effort to adversely influence the retirees case presently before the United States Court of Appeals for the Second Circuit where, among other things, the COLA issue is pending. It might also be an effort to h[ ]ily conclude this matter to coincide with the proposed settlement agreement in JFM 95-52, with respect to the former Plan trustees.

I am enclosing a copy of a letter from our Attorney Mr. Wisehart apprising Judge Motz of the recent developments.

Instead of proceeding with any such settlement of the COLA elimination dispute that at one time all parties including, TCU, the participant retirees and Judge Motz agreed would be illegal, my request on behalf of approximately 400 members of REPA is that Judge Motz be asked to defer any action thereon until after the Second Circuit decision in the pending appeal has been received.

Yours truly

/s/ R. J. Devlin
Robert J. Devlin, President

cc: *By Fax & U.S. Mail*
Arthur M. Wisehart, Esq.
19 West 44th Street
Suite 412
New York, N.Y. 10036-5993

IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JFM 97-3464

SCARDELLETTI, et al.
Plaintiffs,

vs.

DEVLIN, *et al.*
Defendants.

Motions hearing was held in the above referenced case on June 5, 1998 before the Honorable Frederick Motz.

* * *

THE COURT: I can tell you my tentative views and then give you how—I got some questions, but it seems to me clearly that the Motion to Dismiss for Transfer by Mr. Devlin should be denied. I think this case is rather clearly properly here.

* * *

MR. WISEHART: But, you know, I have put in my papers what the physical problems are, and I know Your Honor has read them and I know Your Honor has given all of that careful consideration, and—

THE COURT: I am sympathetic to Mr. Devlin, but there are other weight on the other side, and the fact of the matter is, I have been familiar with this, you know, whether we formally consolidate or not, it is in everybody's interest this get resolved one way or the other as soon as possible and it is much more likely it will be done here.

* * *

THE COURT: This gets to questions of adequacy of representation. It gets to Mr. Devlin doesn't want to be here. It is certainly not inappropriate that you pick Mr. Devlin as the representative of his class since he had filed suit against you all in the Southern District of New York and so it doesn't look collusive, and I also assume, and correct me if I am wrong, that any argument that would be made by Mr. Devlin's class, Mr. Bobo has equal, the Bobo defendants in the Bobo suit have equal incentive to make the same argument.

* * *

THE COURT: I guess what I am interested in knowing, I want vigorous arguments on those issues. On the retirement subsidy issue, will you be weighing in heavily?

MR. JOHNSON: The only thing we will be weighing in heavily for is that the COLA was void. Ab Initio.

THE COURT: So what I need is somebody who is going to effectively and adequately argue that it was not Ab Initio, void Ab Initio and it was a retirement type benefit and that is presumably to Mr. Devlin's—benefit to Mr. Devlin—

MR. WISEHART: It sounds like it, Your Honor. Specifically on this Ab Initio point, no offense to the Court, I mean it is very congenial here, but it is something that I really know very little about at this point.

THE COURT: Frankly, that is what worries me.

MR. WISEHART: I know something, quite a lot about the accrued benefit point.

THE COURT: And with that frank admission that is exact' vhat concerns me. I am not sure whether or not I have a. .dequate representative of the Devlin class.

MR. WISEHART: And resources, what am I going to do? I have a very small office. It is difficult, and I gather

from what has been said that there already has been a lot of litigation history which brings it to this point on the void Ab Initio issue.

THE COURT: Find another Devlin class rep by other counsel who could argue those positions more vigorously?

* * *

THE COURT: Tell me when you are all ready, and frankly counsel as well as representative, I want somebody to come in here who really knows what they are doing in this area. I am not saying that you don't, but you just told me on this Ab Initio, and I need to—

MR. HANRAHAN: I understand.

THE COURT: I have an obligation here in terms of the class action.

MR. HANRAHAN: Thank you.

(Recess.)

THE COURT: I am sorry to throw a monkey wrench in this.

MR. HANRAHAN: We are prepared to try to address the Court's concerns, and we see it as follows. We would try to select another class representative and name that person as a defendant in the actions. It would be someone with characteristics similar to Mr. DeBarr and to Mr. Devlin that they have held some responsible position. Someone with some responsibility of wordly business. Name that person in an amended complaint and advise the individual that counsel fees, reasonable counsel fees for an attorney would be paid. If the individual seeks advice with respect to counsel would be prepared to recommend some knowledgeable lawyer that would be suitable for the representation and I think we can do this very expeditiously because we would like to see this brought to a conclusion as rapidly as possible.

* * *

THE COURT: If you do that, name the new representative of the retiree sub class, I guess the Motion to Dismiss the Transfer becomes moot, isn't it?

MR. HANRAHAN: Yes. We think so.

THE COURT: I will deny it today. I will deny it today in any event, but I deny the Motion to Dismiss the Transfer.

MR. WISEHART: Your Honor, with respect to that, since the motion has been denied, but in terms of the discussion as you have heard today, I assume that Mr. Devlin will not continue to be a party?

THE COURT: I think that is what will happen. After the motion to amend Mr. Devlin will no longer be a party.

WISEHART & KOCH
19 West 44th Street
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New York, New York 10036-5993
(212) 730-0044
FAX (212) 730-0047

Arthur M. Wisehart
---
501 E. Cascade Valley Road
Windsor, New York 13865
(607) 655-2243

Francis E. Koch
1922-1978
229 Court Street
Hoboken, New Jersey 07030
(201) 420-1980

By Federal Express

May 12, 1999

Hon. J. Frederick Motz
United States District Judge
District of Maryland
United States Courthouse
Room 510
101 W. Lombard Street
Baltimore, MD 21201

Re: *Scardelletti et al. v. Santoro, Sr.*,
No. JFM-97-3464

Dear Judge Motz:

As Your Honor will recall, we wrote on April 20, 1999, to request a pretrial conference in the above entitled litigation pursuant to Fed. R. Civ. P. 16 so that the intervention of Mr. Devlin and the Retired Employees Protective Association ("REPA") of approximately 400 members could be considered in light of the recent decision of the United States Court of Appeals for the Second Circuit dated April 13, 1999 in *Devlin et al. v. Transportation Communications International Union and Robert A. Scardeletti* in Second Circuit Docket No. 98-7237 (copy attached for convenient reference).

We still await a response from Your Honor concerning the foregoing request.

* * *

For all of the foregoing reasons it is respectfully requested that the requested conference be scheduled as soon as that can be done on the basis of Your Honor's calendar.

Respectfully submitted,

/s/ Arthur M. Wisehart
ARTHUR M. WISEHART
Attorney for Mr. Devlin and REPA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R.A. SCARDELLETTI, *et. al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et. al.*,
Defendants.

Plaintiffs' Motion to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class And Set a Date for a Hearing to Determine Whether The Proposed Settlement Should be Approved

Plaintiffs, the Trustees of the Transportation Communications International Union Staff Retirement Plan (the "Trustees" and the "Plan", respectively) seek an order (1) modifying the February 9, 1999 conditional order certifying a defendant class composed of two subclasses; (2) making a preliminary determination that the proposed settlement of this action is within a range of reasonableness warranting the distribution of a notice of settlement to the class; (3) approving the proposed notice to the class, attached hereto as Exhibit 1; and (4) setting a date for a hearing to determine whether the proposed settlement should be approved. The reasons for granting these requests are set forth in the accompanying memorandum of law.

Respectfully submitted,

Dated: August 26, 1999 /s/ _____

WILLIAM F. HANRAHAN
(Federal Bar No. 012248)
LONIE A. HASSEL
(Federal Bar No. 012246)
ALVARO I. ANILLO
Groom Law Group, Chartered
1701 Pennsylvania Ave., N.W.
Suite 1200
Washington, D.C. 20006
(202) 857-0620
Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION AND SETTLEMENT HEARING

TO: ALL ACTIVE, TERMINATED VESTED AND RETIRED PARTICIPANTS AND THEIR BENEFICIARIES IN THE TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION STAFF RETIREMENT PLAN, EXCEPT R.A. SCARDELLETTI, FRANK FERLIN, JR., JOEL PARKER, DON BUJOLD, HOWARD RANDOLPH, MITCHELL M. KRAUS, DONALD A. BOBO, R.I. KILROY, F.T. LYNCH AND FRANK MAZUR.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. YOUR RIGHTS MAY BE AFFECTED BY THIS CLASS ACTION LITIGATION. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THIS ACTION AND CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS. IF YOU ARE A MEMBER THE CLASS, YOU MAY BE ENTITLED TO RECEIVE AN INCREASE IN PENSION BENEFITS PURSUANT TO THE PROPOSED SETTLEMENT.

EXHIBIT 1

THIS NOTICE IS TO INFORM YOU OF:

1. THE PROPOSED SETTLEMENT OF THE CLAIMS ASSERTED IN THIS ACTION CONCERNING THE AUTOMATIC COSTS OF LIVING ADJUSTMENT ADOPTED EFFECTIVE JANUARY 1, 1991;

2. A HEARING TO BE HELD ON _____ AT _____ _.M. IN COURTROOM ___ OF THE UNITED STATES COURTHOUSE, 101 W. LOMBARD STREET, BALTIMORE, MARYLAND 21201 TO DETERMINE WHETHER THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE APPROVED BY THE COURT, AND WHETHER AN ORDER SHOULD BE ENTERED APPROVING THE SETTLEMENT AND GRANTING THE EQUITABLE RELIEF REQUESTED BY THE PLAINTIFFS IN ACCORDANCE WITH THE SETTLEMENT; AND

3. YOUR RIGHT, IF YOU ARE A MEMBER OF THE CLASS, TO PRESENT YOUR VIEWS TO THE COURT.

* * *

V. Effective Date of the Settlement

This settlement is contingent upon the following things occurring. First, the Court must examine the terms of this settlement and consider any objections to the settlement that may be made by an member of the Class. Second, if the Court determines that the settlement should be approved, it will enter an order approving the settlement and dismissing this action. If no appeal is filed from the order approving the settlement, the settlement agreement will become fully

effective once the time for filing an appeal (usually 30 days) has expired. The Plan will then promptly make the increases in pensions called for by this settlement and make any retroactive payments required. However, if an appeal is filed, the settlement will remain contingent until all appellate proceedings are concluded. Therefore, if an appeal is taken, it may be several months before the settlement becomes final, assuming the appellate court also approves the settlement.

VI. Payment of Attorneys' Fees

At the outset of the Action, TCU advised Mr. DeBarr, the Active Subclass Representative, that inasmuch as he was being called upon to serve as a representative of the subclass that consists primarily of TCU's active employees and their beneficiaries, and because TCU is concerned that all employees have adequate representation, TCU would undertake to compensate counsel for the Active Subclass for the reasonable fees and expense of this litigation. Mr. DeBarr consented to this arrangement.

With the consent of Mr. Santoro, the Retiree Subclass Representative, the Plan similarly agreed to pay reasonable counsel fees for counsel for the Retiree Subclass. These fee arrangements were disclosed to the Court in the Trustee's memorandum in support of the motion for class certification, which was conditionally granted on February 9, 1999.

Counsel for the Active and Retiree Subclasses are compensated on an hourly basis and will not receive a share of any settlement. Thus, will the value of the settlement for the Active and Retiree Subclasses is more than $8 million, the fees that will be paid to counsel for the Active and Retiree Subclasses are estimated to total less than $100,000.

VII. Election by Class Members

If you are a member of the Class, *you do not need to take any action* and your rights will be represented by your Subclass Representative and counsel. If you wish, you may

enter a legal appearance individually or through your own counsel at your own expense. As a member of the Class, however, you do not have to do anything further to participate in the benefits to Class members from this settlement.

Class members have no right to exclude themselves from the Class.

VIII. Court Hearing on the Proposed Settlement and Your Rights With Respect to the Settlement

Any member of the Class may, but need not, enter an appearance in the Action either personally or through counsel of his or her choice. Any member of the Class who enters an appearance may be responsible for his or her own attorneys' fees and expenses. Any member of the Class who does not enter an appearance through counsel in the Action will be represented by counsel for his or her Subclass.

A hearing (the "Hearing") will be held on _____, 1999 at ____ _.m. (or at any such adjourned time or times that the Court may without further notice direct) in Courtroom ____ of the United States Courthouse, 101 W. Lombard Street, Baltimore, MD 21201 to consider, among other things, whether the settlement of the Action pursuant to the terms and conditions set forth in the Settlement Agreement and summarized in this Notice should be approved as fair, reasonable and adequate to the members of the Class and whether an order should be entered approving the settlement and granting the equitable relief requested by the Trustees in accordance with the settlement.

The Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the members of the Class.

If you are a member of the Class, you are entitled to object, if you so desire, to the proposed settlement. Objections by members of the Class to the settlement will be heard separately at the same Hearing and any papers submitted in

support of the objections will be received and considered by the Court at the Hearing. No person shall be heard, however, unless he or she gives written notice of his or her intention to appear and object (which shall set forth briefly each objection and the basis therefor) and files the notice on or before _____, 1999, with the Clerk of the United States District Court for the District of Maryland, United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland, 21201, and sends a copy of the written notice and of any papers in support of his or position by first class mail, postage pre-paid; over night delivery service; or messenger on or before _____, 1999 to each of the following attorneys:

Counsel for Plaintiffs:

WILLIAM F. HANRAHAN
GROOM LAW GROUP, CHTD.
1701 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Counsel for the Retiree Subclass:

BARBARA KRAFT
BEINS, AXELROD & KRAFT, P.C.
1717 Massachusetts Ave., N.W.
Suite 704
Washington, D.C. 20036

Counsel for the Active Subclass:

KENNETH JOHNSON
TUGGLE, DUGGINS & MESCHAN, P.A.
228 West Market Street
P.O. Box 2888
Greensboro, North Carolina 27402

All written notices of objection must identify clearly any and all witnesses, documents and other evidence of any kind that are to presented at the Hearing and also must set forth the substance of any testimony to be given by witnesses. Objections and other papers should refer to *Scardelletti v.*

Santoro, Civil Action No. JFM-97-3464, and must show proof of service on each of the counsel listed in the preceding paragraph.

Any member of the Class who does not make his or her objection or opposition to the matters described in the Notice in the manner provided in this Notice shall be deemed to have waived all objections and opposition to any and all matters to be considered at the Hearing and any and all subsequent hearings on these matters.

IX. Examination of Papers and Questions

For a more detailed statement of matters referred to in this Notice, including the details of the settlement, releases and other important matters, Class Members are invited to inspect the Complaint, Settlement Agreement and all other papers filed in the Action in the Office of the Clerk, United States District Court for the District of Maryland, 101 W. Lombard Street, Baltimore, Maryland 21201, during regular business hours of each business day.

QUESTIONS SHOULD NOT BE DIRECTED TO THE COURT.

Instead, Retiree Subclass members should contact:

BARBARA KRAFT
BEINS, AXELROD & KRAFT
1717 Massachusetts Ave., N.W.
Suite 704
Washington, D.C. 20036
(202) 328-7222

and Active Subclass member should contact:

KENNETH JOHNSON
TUGGLE, DUGGINS & MESCHAN, P.A.
228 West Market Street
P.O. Box 2888
Greensboro, North Carolina 27402
(336) 378-1431

Dated: _____

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

_____
Clerk of the Court
United States District Court
for the District of Maryland

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No.
JFM-97-3464

R.A. SCARDELLETTI, *et al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

NOTICE OF CROSS-MOTION

PLEASE TAKE NOTICE THAT, upon the affidavit of Robert J. Devlin sworn to September 9, 1999, and the accompanying Memorandum of Law, Robert J. Devlin, a member of the PURPORTED subclass of retirees, on behalf of himself and on behalf of the Retired Employees Protective Association ("REPA"), of which he is President, will move this Court at the United States Courthouse, 101 West Lombard Street, Baltimore, Maryland, Room 5A, before the Honorable J. Frederick Motz, U.S.D.J., for an Order (a) dismissing, denying or striking plaintiffs' Motion to Modify the Class Certification Order, Preliminarily Approve the Proposed Settlement, Approve the Proposed Notice to the Class and Set a Date for a Hearing to Determine Whether the Proposed Settlement Should be approve dated August 26, 1999, pursuant to Fed.R.Civ.P. 23(a) and (d) and 28 U.S.C. § 1927, (b) granting leave to move to intervene pursuant to Fed.R.Civ.P. 24(a) and (b), and (c) providing such other and further relief as to this Court may seem just and proper, including attorney's fees, costs and reasonable expenses.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to Fed.R.Civ.P. 6(e), and Local rule 105 (2), answering papers, if any, are required to be served upon counsel listed below on or before September 24, 1999, and reply papers are to be served on or before October 4, 1999.

Dated: September 9, 1999

/s/ _____
ARTHUR M. WISEHART (AMW 4003)
WISEHART & KOCH
19 W 44th Street, Suite 412
New York, New York 10036
(212) 730-0044

/s/ _____
TRAVIS MASTRODDI (25164)
KAHN, SMITH, & COLLINS
201 North Charles Street, 10th Floor
Baltimore, Maryland 21201
(410) 244-1010

Attorneys for Robert J. Devlin
And the
Retired Employees Protective Association

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No.
JFM-97-3464

R.A. SCARDELLETTI, *et al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

AFFIDAVIT OF ROBERT J. DEVLIN
IN SUPPORT OF CROSS-MOTION

STATE OF NEW YORK
COUNTY OF NEW YORK—ss. :

ROBERT J. DEVLIN, being duly sworn, deposes and says:

1. This affidavit is respectfully submitted on the basis of personal knowledge as a former officer and employee of the Transportation Communications International Union ("TCU") entitled to benefits under the TCU Staff Retirement Plan, and as President the Retired Employees Protective Association ("REPA") consisting of approximately 400 persons who are former employees and participants, or their beneficiaries, of their pensions thereunder.

2. This affidavit is respectfully submitted in support of a cross-motion to dismiss, deny and strike a motion dated August 26, 1999, and filed August 27, 1999, seeking an order concerning certain provisions with respect to a proposed settlement of the above entitled action.

3. The motion regarding the proposed settlement was not served upon me or my attorney. I learned of the existence of the motion only when I learned of a rumor concerning it. Thus, I was forced to call Documents Technology, Inc., and through the assistance of that firm, a copy of the motion papers were received by me on September 4, 1999.

4. The fact that a copy of the motion was not served upon me by the counsel involved is particularly outrageous because Barbara Kraft, Esq., is listed as counsel for the Retiree Subclass at page 19 of the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing attached to the motion dated August 26, 1999. I have written to Ms. Kraft frequently on behalf of the members REPA regarding our concerns and objections to any such settlement, and my interest in the subject of the motion therefore was clearly known to the counsel involved. I therefore am forced to conclude that the intention of counsel to exclude me from being served with a set of the motion papers was deliberate.

5. The grounds of the cross-motion include:

(a) the bad faith of those making the motion, and their responsibility therefor under 28 U.S.C. § 1927;

(b) the disabling conflicts of interests of the attorneys making the motion;

(c) the improper interference of those attorneys and those responsible for making the motion with case currently pending in the United States District Court for the Southern District of New York before Hon. John F. Keenan, U.S.D.J., entitled *Devlin, et al. v. Transportation Communications International Union and Robert A. Scardelletti, International President*, 95 Civ. 0742, 95 Civ. 10838 (JFK) [Consolidated];

(d) the denial of due process to my self and members of REPA in connection with the making of the motion in this Court; and

(e) requesting leave to intervene pursuant to Fed.R.Civ.P. 24.

6. As this Court will recall, I previously was named as a party defendant in an action commenced in this Court and objected to such status primarily because of lack of resources and because of my pending litigation in the United States District Court in the Southern District of New York.

7. My affidavit in opposition dated March 31, 1998, is annexed hereto as Exhibit A.

8. On June 5, 1998, a hearing was conducted in this Court regarding the matter and the transcript of the hearing prepared by the Official Court Reporter is annexed hereto as Exhibit B.

9. As shown in the transcript, the Court specifically inquired about whether it would be possible for my counsel and myself to vigorously litigate the issue of whether or not the COLA amendments to the TCU Retirement Plan were *void ab initio* (TR 6/5/98, pp. 19-20):

"MR. JOHNSON: The only thing we will be weighing in heavily for is that the COLA was void Ab Initio.

"THE COURT: So what I need is somebody who is going to effectively and adequately argue that it was no Ab Initio, void Ab Initio and it was a retirement type benefit and that is presumably to Mr. Devlin's—benefit to Mr. Devlin—

"MR. WISEHART: It sounds like it, Your Honor. Specifically on this Ab Initio point, no offense to the Court. I mean it is very congenial here, but it is something that I really know very little about at this point.

"THE COURT: Frankly, that is what worries me.

"MR. WISEHART: I know something, quite a lot about the accrued benefit point.

"THE COURT: And with that frank admission that is exactly what concerns me. I am not sure whether or not I have an adequate representation of the Devlin class.

"MR. WISEHART: And resources, what am I going to do? I have a very small office. It is difficult, and I gather from what has been said that there already has been a lot of litigation history which brings it to this point on the void Ab Initio issue.

"THE COURT: Find another Devlin class rep by other counsel who could argue those positions more vigorously?

"MR. WISEHART: They would have to be in this case I think.

"THE COURT: Wait. They could or couldn't? That is the very problem. They can pick the defendant. They picked you for reasons which nobody can ever call collusive because you sued them in the Southern District of New York, so Mr. Devlin was a natural defendant in the action here, so now we get into the more dangerous area where you would pick another defendant, but frankly from my point of view, I wan vigorous representation on these issues by the members of what are right now the Devlin sub class.

"MR. HANRAHAN: Judge Motz, Mr. Scardelletti is here today, he is the chairman of the board. I wonder if I could have a minute to talk to him?

"THE COURT: You want a short recess?

"MR. HANRAHAN: That would be good.

"THE COURT: Tell me when you are all ready, and frankly counsel as well as representative, I want somebody to come in here who really knows what they are doing in this area. I am not saying you don't, but you just told me, on this Ab Initio, and I need to --

"MR. HANRAHAN: I understand.

"THE COURT: I have an obligation here in terms of the class action.

"MR. HANRAHAN: Thank you."

10. On that basis, the Court acceded to the request of counsel for the plaintiffs to appoint another attorney to represent the class and Scardelletti et al., even agreed to compensate such counsel in connection with such representation even though they had been unwilling to provide the resources necessary for the representation of myself and the other REPA members in this Court.

11. The counsel that they chose for such purpose was Barbara Kraft, Esq.

12. Further, the class representative rather than myself who was chosen was Anthony Santoro, Sr.

13. As it turned out, we later learned that both Barbara Kraft, Esq., and Mr. Santoro also were disabled as a result of conflicts of interest.

14. When I sought to obtain additional information from Ms. Kraft, however, it was not provided, although my requests had been made as soon as the matter was brought to my attention, as shown in the letters dated 2/23/99, 3/22/99, 4/7/99, 4/21/99, and 4/26/99, annexed hereto as Exhibits C; D; E; F and G, respectively.

15. The outrageousness of the continuing representation of Ms. Kraft of the purported class in shown by the fact that it is believed that the members of REPA are by far the large

majority of those in the class that Ms. Kraft purports to represent.

16. REPA has approximately 400 members and their beneficiaries and the class that Ms. Kraft purports to represent is approximately the same size and involves the same persons.

17. The purported representation of the class by Ms. Kraft therefore constitutes a perversion of the class action system as provided in the Federal Rules of Civil Procedure.

18. The motion purportedly made on behalf of that class by Barbara Kraft therefore is a nullity because she does not in fact represent that class or the members of the class or the persons having an interest in the class. The interests she represents in reality are the plaintiffs in this action because it is their interests that she seeks to promote by making a motion contrary to my view previously expressed to her in the letters annexed hereto as Exhibits C, D, E, F and G.

19. In fact the proposed settlement is much inferior to what she had previously advocated in correspondence with me dated December 16, 1998. (Exhibit H annexed hereto.)

20. The bad faith of the attorneys involved in making the instant motion is further shown by the fact that the issue of whether the COLA amendments were or were not *void ab initio* which the Court emphasized at the hearing June 5, 1998, as being of the utmost importance in connection with the representation of the class was never resolved or even addressed after Mr. Santoro and Ms. Kraft were put forward as representatives of the class.

21. The bad faith of Ms. Kraft and Mr. Hanrahan in making the instant motion is also shown by its relationship to the litigation pending in the United States District Court for the Southern District of New York.

22. The motive of improperly interfering with the pendency of that litigation is shown by a simple recitation of the following events:

(a) The litigation in New York was based upon two separate complaints previously filed in that Court, the dismissal of which was reversed in decisions by the United States Court of Appeals for the Second dated April 13, 1999, herein (Exhibits I and J annexed hereto).

(b) Following the decisions of the United States Court of Appeals for the Second Circuit a Pre-Trial conference was held before the District Court on June 9, 1999, at which it was agreed by all counsel that the two cases would be consolidated under a stipulation of consolidated that was "so ordered" by Judge Keenan on June 21, 1999, by Judge Keenan as shown in Exhibit K annexed hereto.

(c) Pursuant thereto, plaintiffs therein including myself made a motion for permission to amend the complaint therein consolidating the two actions and the proposed Amended Consolidated Complaint is annexed hereto as Exhibit L.

(d) The motion to amend the complaint is currently under consideration by Judge Keenan, the final papers in connection therewith having been filed on July 9, 1999.

(e) My reply affidavit of August 12, 1999, that Mr. Hanrahan and the counsel for Mr. Scardelletti in the New York action had wrongfully interfered with the pendency of the motion to consolidate by submitting an affidavit from Mr. Hanrahan in which he referred to the purported settlement and the release clause in that agreement. My reply affidavit is annexed hereto as Exhibit M.

23. The release provisions relied upon by Mr. Hanrahan as well as the release proposed as a part of the settlement in this litigation (proposed Settlement Agreement and Release paragraphs 7-9 demonstrates beyond any doubt the bad faith of the movants herein consists of because such release would have the effect of eliminating the claims pending before Judge Keenan in the United States District Court of the Southern District of New York.

24. Thus the hurried attempt by the plaintiffs herein and their counsel is for the purpose of denying due process to myself and the other members of REPA with their right to prosecute their claims in the United States District Court for the Southern District of New York.

25. Finally, the opinion of the United States District Court for the Second Circuit, indicates that we would be entitled to seek to intervene before this Court. (Exhibit J, pp. 24-25.)

26. I have previously written to this Court in letters dated May 12, 1999, and April 20, 1999, Exhibits N and O annexed hereto, respectively, seeking to intervene but received no response from the Court or from opposing counsel.

27. Meanwhile, it appears that the purpose of plaintiffs herein was to subvert the right to intervene by proceeding to negotiate a purported settlement that they knew that REPA and the true members of the class would oppose for the purpose of eliminating their claims in the pending litigation in the United States District Court for the Southern District of New York.

28. Such conspiratorial action should be avoided and the fruit of the poison tree in the form of the instant motion should be denied, dismissed, and stricken.

29. The conflict of interest regarding plaintiff Scardelletti is of particular concern since, in the New York litigation, it

has been held that Mr. Scardelletti, who is a defendant in that litigation, could be sued for breach of fiduciary duty.

30. It therefore is apparent that defendant Santoro in this litigation and his counsel should have asserted a claim against plaintiff Scardelletti, but he has failed to do so and instead is rushing to push through a proposed settlement that would release Scardelletti from "any and all" liabilities.

31. Thus the dominant motive of those entering into the proposed settlement is not to benefit the members of the class that they purport to represent, but to launder the extensive claims that may be asserted against plaintiff Scardelletti, and to impose on the Retirement Plan costs and liabilities that should be the responsibility of plaintiff Scardelletti for his repeated violations of fiduciary duties as well as the liabilities for which Mr. Scardelletti himself may be found liable as reflected in the Amended Consolidated Complaint that is under consideration therein (Exhibit L annexed hereto).

32. That Mr. Scardelletti is subject to extensive liabilities for breaches of fiduciary duties in connection with the mishandling of expenses and funds belonging to the TCU and the Retirement Plan is based upon information that has been supplied to me from official records involving the TCU.

33. Among other things, plaintiff Scardelletti to my personal knowledge is personally responsible for any shortage of assets in the Retirement Plan for the purpose of funding the COLA benefits because in 1987 he was involved in putting through the elimination of the requirement that active employees contribute 6-1/4% of their salaries to help defray pension costs.

34. The involvement of plaintiff Scardelletti in this elimination of resources available to the Retirement Plan was done to enhance his own political status within the TCU, and in furtherance of the increase of his own take-home pay as officer of the TCU, contrary to the best interests of myself

and the other members of REPA, the majority of whom had been required to contribute 6-1/4% of our salaries to the Retirement Plan during the period of our employment.

35. In addition, any shortage of funds on the part of the TCU as referred to in the settlement proposal herein is also attributable to Mr. Scardelleltti because of his own pattern or practice of using funds of the union to defray his personal expenses and to support his own lavish life-style as documented by the United States Department of Labor, an issue that has been permitted to linger on by the officers of the TCU under the control of plaintiff Scardelletti without ever being resolved.

THE IMPORTANCE OF INTERVENTION

36. A letter from me to Barbara Kraft, Esq., dated April 21, 1999, demonstrates the importance of intervention in this litigation at this time (Exhibit F annexed hereto).

37. In that letter to Ms. Kraft, I requested that she both support our intervention in this litigation and our request for the immediate issuance of a preliminary injunction so that the COLA benefits could be restored at least on a temporary basis.

38. The importance of such a remedy is indicated by the fact that since the elimination of the COLA benefit, approximately 40 members of REPA have been afflicted by the ultimate irreparable injury in that they have passed away so that no remedy could ever make them whole.

39. In a further letter to Ms. Kraft dated April 22, 1999, from Arthur M. Wisehart, Esq., my attorney, the request for a preliminary injunction is again requested so that the continuation of the COLA adjustments would be continued for the time being until further determinations on the merits are made. (Exhibit P annexed hereto.)

40. The request that Ms. Kraft proceed to cooperate in requesting the immediate issuance of a preliminary injunction was repeated in my letter to her dated April 26, 1999 (Exhibit G annexed hereto).

41. Although purporting to represent the class, the fact that Ms. Kraft was not doing so, in fact, is demonstrated by her failure even to respond to the requests that had been made to her regarding her cooperation in seeking the issuance of a preliminary injunction.

42. Instead of proceeding to seek a preliminary injunction, as requested, or even providing the courtesy of a reply, Ms. Kraft proceeded to engage in the negotiation of a settlement proposal on terms that she knew to be opposed by myself and other members of REPA and highly prejudicial to their interests in light of the release provisions contained therein.

43. In order to preserve and reinstate the COLA benefit and prevent further irreparable injury resulting from its elimination, intervention should be granted at this time for that purpose.

44. The fact that the proposed settlement would restore COLA benefits is itself indicative of a determination that the funds in the Retirement Plan are sufficient to restore COLA benefits pursuant to a preliminary injunction to restore the status quo until further determinations on the merits are made.

WHEREFORE, the cross-motion for an order dismissing, denying or striking plaintiffs' motion, and granting intervention so that a preliminary injunction may be entered to prevent irreparable injury caused by the elimination of COLA benefits should be granted.

Respectfully submitted,

/s/ _____
ROBERT J. DEVLIN

Sworn to before me this
9th day of September, 1999:

/s/ _____
Notary Public

JOAN LIPIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 01LI5031518
Qualified in New York County
Commission expires August 8, 2000

BEINS, AXELROD & KRAFT, P.C.

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OF COUNSEL
JOSEPH E. SLATER

December 16, 1998

ROBERT J. DEVLIN
342 Fifth Avenue
Ridge Edge, NJ 07661-1113

Re: *Scardelletti v. Santoro*, C.A. No. JFM-97-3467

Dear Mr. Devlin:

Thank you for your letter of December 7, 1998.

To the extent you letter purports to restate the contents of our earlier phone conversations, the letter's statement that I would not "respond" to a settlement offer until the question of class certification was resolved in not quite accurate. What I thought I told you, and what I meant to convey, was that Judge Motz had put off deciding whether to grant the plaintiffs' motion for class certification until the parties explored the possibility of a settlement. I believe I also told you that I had suggested to Judge Motz that the case should be certified as a class action for purposes of settlement discussions and possible presentation of a settlement offer to Plan participants, as well as for purposes of litigation if settlement efforts were unsuccessful. In any event, I have stated that position to Judge Motz in open court and in telephone conferences with him and other counsel.

Enclosed for your information is a copy of a proposed order I drafted, which also reflects the input of the other parties. This proposed order, or something like it, will probably be presented to Judge Motz for his signature within the next day or two. The proposed order calls for conditional certification of the case as a class action for settlement purposes.

Meanwhile, the actuary I retained reviewed the Plan's actuarial reports and agreed with the Plan actuary's projected costs to the Plan of various scenarios, including maintaining the Plan as it stands effective January 1, 1998, reducing post-1990 retirees/terminated vested employees' benefits by reverting to the terms of the Plan prior to 1/1/91, increasing pre-1991 retirees' benefits by 5%, and limiting post-1990 retirees' to 2 COLA adjustments. Working with my actuary, I developed an alternative proposal, a copy of which is enclosed. The plaintiffs have not responded to my alternative proposal. My actuary has not prepared a written report.

Please call if you have questions regarding the above matters. As you can see from the proposed order, all the retirees will have a chance to express their views on any proposed settlement. Judge Motz will hold a hearing for that purpose, and will also review written comments and objections from individual class members.

Sincerely,

Barbara Kraft

Enclosures: Proposed Order

December 10, 1998 letter B. Kraft to William F. Hanrahan

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

C. A. No. JFM-97-3464

R. A. SCARDELLETTI, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

ORDER CERTIFYING ENTRY OF CONDITIONAL CLASS ACTION AND DIRECTING SUBMISSION OF PROPOSED SETTLEMENT AND NOTICE TO THE COURT

Upon consideration of plaintiffs' motion for class certification and the responses thereto of the putative class representatives George Thomas DeBarr and Anthony Santoro, Sr., and in accordance with the Opinion granting said motion filed concurrently herewith, it is, subject to alteration or amendment under Fed. R. Civ. P. 23(c) conditionally ORDERED:

1. *Class Certification.* This action, titled *R. A. Scardelletti, et al. v. Anthony Santoro, Sr., et al.*, shall be maintained as a class action. This conditional certification is granted for purposes of the parties' attempts to arrive at a settlement which could subsequently be certified and noticed as a settlement class action. For purposes of this conditional certification, the action shall be maintained on behalf of the following class of defendants:

> All active, terminated vested and retired participants and their beneficiaries in the Transportation Communications International Union Staff Retirement Plan.

> This class shall be further divided into subclasses denominated Subclass 1 and Subclass 2.

Subclass 1 shall consist of two parts, as follows:

> Subclass 1-A will consist of all class members who retired on or after January 1, 1991 and will suffer a loss in their benefits in the event this Court grants the equitable relief sought in the complaint.
>
> Subclass 1-B will consist of all class members who retired prior to January 1, 1991 (and their beneficiaries) whose retirement benefits were reduced as a result of the October 1997 plan amendment eliminating the automatic COLA adjustment to their benefits.

Subclass 2 shall consist of all class members who, based on certain assumptions regarding future compensation and years of service as well as the March, 1998 resolution of the Executive Council of the Transportation Communications International Union, would likely benefit in the event this Court grants the equitable relief sought in the complaint.

The following persons shall be excluded from the class: R. A. Scardelletti, Frank Ferlin, Jr., Joel Parker, Don Bujold, Mitchell M. Krause, Donald A. Bobo, R. I. Kilroy, F. T. Lynch and Frank Mazur.

The Court and the parties agree that the passage of time and unanticipated events may affect the determination of whether particular class members are in Subclass 1 or Subclass 2 at any given point in time. The Court and the parties also agree that, should the parties not succeed in reaching a settlement, or should the Court determine not to approve a proposed settlement, the definitions of the class and the two subclasses may be revised.

2. *Class Representative: Class Counsel.* Subject to further order of the Court, Anthony Santoro, Sr. is designated class representative of Subclass 1. George Thomas DeBarr is

designated class representative of Subclass 2. Barbara Kraft is designated counsel for Subclass 1. Kenneth M. Johnson is designated as counsel for Subclass 2.

3. *Submission of proposed settlement and notice to the Court.* By March 1, 1999, counsel and the class representatives shall submit to the Court their proposed settlement of this case and a proposed *Notice of Pendency of Class Action and Hearing on Proposed Settlement* in a form to be agreed upon by the parties. The Court will thereafter determine whether the proposed settlement appears to be within the range of reasonableness and whether it should be submitted to class members for their approval. The Court will also approve, disapprove or modify the proposed *Notice* and indicate the date for hearing on the proposed settlement.

4. *Notice.* Class counsel and plaintiffs' counsel shall, within 15 days after the Court's approval of the *Notice of Pendency of Class Action and Hearing on Proposed Settlement*, cause to be mailed to all class members who can be identified through reasonable efforts a copy of said *Notice* as approved by the Court. The *Notice* will describe the proposed settlement reached by the parties and the class representatives and will notify class members of the date, time and place of the hearing on the proposed settlement and their opportunity to attend the hearing and submit written comments.

5. *Hearing on proposed settlement.* Upon certification to the Court by counsel that the *Notice* has been mailed to all class members, the Court will hold a hearing on the proposed settlement on the date set forth in the *Notice*. The purpose of the hearing will be to consider whether the settlement should be given final approval by the Court. Objections to the proposed settlement will be considered if filed in writing with the Clerk on or before [*the date 10 days prior to the hearing date.*] Class members may be heard orally in support of or in opposition to the proposed settlement provided they have

notified the Clerk in writing received by [*the date 10 days prior to the hearing date*] of their intention to appear at the hearing. Counsel and the class representatives will respond at the hearing to any objections to the proposed settlement raised by class members.

6. *Further orders of the Court.* The Court will consider the objections to the proposed settlement raised by class members at the hearing or in written comments, and will thereafter make a final ruling on the proposed settlement. In the event the Court does not approve the proposed settlement, the Court will entertain the parties' written

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

ORDER CERTIFYING CLASS AND SETTING HEARING ON PROPOSED SETTLEMENT

Upon consideration of plaintiffs' motion to modify the conditional class certification order dated February 9, 1999, to preliminarily approve the proposed settlement, approve the proposed notice to the class, and to set a date for a hearing to determine whether the proposed settlement should be approved ("plaintiffs' motion"), it is hereby ORDERED:

1. *Class Certification.* Civil Action No. JFM-97-3464, styled, *R.A. Scardelletti, et al. v. Anthony Santoro, Sr., et al.*, (the "Action") shall continue to be maintained as a class action against the following Class of defendants:

> All active, terminated vested and retired participants and their beneficiaries in the Transportation Communications International Union Staff Retirement Plan ("Plan").

The order dated February 9, 1999, conditionally certifying the Class and subdividing the Class into Subclass I-A and 1_B and Subclass 2 is hereby modified by eliminating the definitions of the Subclasses, and by subdividing the Class into subclasses denominated the Retiree Subclass and the Active Subclass.

The Retiree Subclass shall consist of all members of the Class who retired or terminated service under the Plan prior to January 1, 1999. The Retiree Subclass has two parts: (1) all class members who retired on or after January 1, 1991 who will suffer a loss in benefits under the Plan in the event the Court grants the relief sought in the Action and (2) all class members who retired prior to January 1, 1991 whose Plan benefits were reduced as a result of the October 1997 amendment eliminating the 1991 COLA.

The Active Subclass shall consists of all members of the Class who had not retired or terminated service under the Plan prior to January 1, 1999.

The following persons shall be excluded from the class: R.A. Scardelletti, Frank Ferlin, Jr., Joel Parker, Don Bujold, Howard Randolph, Mitchell M. Kraus, Donald A. Bobo, R. I. Kilroy, F. T. Lynch and Frank Mazur.

3. *Class Representative: Class Counsel.* Anthony Santoro, Sr. is designated Class representative of the Retiree Subclass. George Thomas DeBarr is designated Class representative of the Active Subclass. Barbara Kraft is designated counsel for the Retiree Subclass. Kenneth M. Johnson is designated as counsel for the Active Subclass.

1. The proposed settlement between the plaintiffs and the Defendant Class, as set forth in the Settlement Agreement and Release ("Settlement Agreement") submitted as Exhibit 2 to the plaintiffs' motion, appears, upon preliminary review, to be within the range of reasonableness and accordingly shall be submitted to the Class members for their consideration and for a hearing under Fed. R. Civ. P. 23(e).

4. *Hearing*

(a) A hearing (the "Hearing") will be held on *Friday, November 12*, 1999, at *11:30 a*.m. (or any such adjourned time or times that the Court may without further notice direct) in Courtroom *5A* of the United

States courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201 to consider, among other things, whether the settlement of this action pursuant to the terms and conditions set forth in the Settlement Agreement should be approved as fair, reasonable and adequate to the members of the Class and whether an order should be entered approving the settlement and granting the equitable relief requested by the plaintiffs in accordance with the settlement.

(b) The Hearing may be postponed, adjourned or reschedule by order of the Court without further notice to the members of the Class.

(c) Members of the Class may object to the proposed settlement. Objections by members of the Class to the settlement will be heard separately at the same Hearing and any papers submitted in support of the objections will be received and considered by the Court at the Hearing. No person shall be heard, however, unless he or she gives written notice of his or her intention to appear and object (which shall set forth briefly each objection and the basis therefor) and files the notice on or before *October 18, 1999*, with the Clerk of the United States District Court for the District of Maryland, and sends a copy of the written notice and any papers in support of his or her position by first class mail, postage prepaid; overnight delivery service; or messenger on or before *October 18,* 1999 to counsel for the plaintiffs and counsel for the Subclasses.

(d) All written notices of objection must identify clearly any and all witnesses, documents and other evidence of any kind that are to be presented at the Hearing and also must set forth the substance of any testimony to be given by witnesses. Objections and other papers should refer to *Scardelletti v. Santoro*, Civil

Action No. JFM-97-3464, and must show proof of service on counsel for the plaintiffs and counsel for the Subclasses.

(e) Any member of the Class who does not make his or her objection or opposition to the proposed settlement in the manner provided hereto shall be deemed to have waived all objections and opposition to any and all matters to be considered at the Hearing and any and all subsequent hearings on these matters.

5. *Notice.* Counsel for the plaintiffs, in consultation with counsel for the Subclasses, shall by *September 17,* 1999, cause to be mailed in the name of the Clerk by first class mail, postage prepaid, to all Class members who can be identified through reasonable efforts, a notice in substantially the same form as Exhibit 1 to plaintiffs' motion.

6. *List of Class Members.* Counsel for the plaintiffs, in consultation with counsel for the Subclasses, shall file with the Clerk by *October 1*, 1999, and affidavit identifying the persons to whom notice has been mailed.

Dated: September 14, 1999

/s/_____
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R. A. SCARDELLETT, *et al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*
Defendants.

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO ROBERT DEVLIN'S MOTION TO INTERVENE AND RESPONSE TO CROSS-MOTION

Robert Devlin, a member of the defendant Retiree Subclass, filed a "Cross Motion" on September 9, 1999 asking the court to permit him to intervene and raising objections to the proposed settlement of this action. Plaintiffs, R.A. Scardelletti, Joel Parker, and Howard Randolph, ask the Court to deny Mr. Devlin's request to intervene as well as the other relief sought in the Cross Motion and to direct Mr. Devlin to raise any objections to the proposed settlement agreement at the fairness hearing in this action scheduled for November 12, 1999.

Preliminary Statement

In October 1997, almost two years ago, the plaintiffs, as Trustees of the Transportation Communications Union International Staff Retirement Plan ("Plan"), commenced this defendant class action. The Trustees named Mr. Devlin as the representative of the Retiree Subclass, consisting of individuals who retired under the Plan before 1991 and their

beneficiaries. The Trustees chose Mr. Devlin because he had brought an action in United States District Court for the Southern District of New York ("New York Action"), nominally on behalf of Plan retirees, challenging, among other things, the elimination of the automatic cost of living adjustment under the Plan that became effective in 1991 ("1991 COLA"). The Trustees thought that, because Mr. Devlin was obviously concerned about the 1991 COLA, had undertaken to represent Plan retirees and had obtained counsel for that purpose, he would be an appropriate representative for the Retiree Subclass in this action.

Mr. Devlin, however, declined to serve as the class representative and asked the Court's permission to withdraw. In support of his request, Mr. Devlin told the Court that he lacked the desire and financial resources to litigate in the District of Maryland. Mr. Devlin's counsel further informed the Court that counsel knew very little about the issue of whether the 1991 COLA could be deemed void *ab initio*, one of the principal issues in this case. For these reasons, the Court approved Mr. Devlin's withdrawal from this action. The Trustees then named Anthony Santoro, Sr. as the replacement representative of the Retiree Subclass. Mr. Santoro agreed to be represented by Barbara Kraft, as counsel for the Retiree Subclass.

Now, after the parties have reached a settlement following months of negotiations supervised by a magistrate judge, Mr. Devlin complains that he is inadequately represented and seeks to intervene, contradicting his earlier position on participating in this action. Even if Mr. Devlin and his counsel's circumstances have changed so that their participation would be appropriate, Mr. Devlin's motion to intervene should be denied. As explained below, Mr. Devlin has not demonstrated that he has a right to intervene under Federal Rule of Civil Procedure 24(a) or that intervention should be permitted under Rule 24(b).

All of the other points that Mr. Devlin raises in his Cross Motion are either utterly irrelevant to any issue presented in this case, or are objections to the proposed settlement. The Notice of Settlement ("Notice") sent to class members, including Mr. Devlin, on September 16, 1999, describes the procedure for raising objections to the proposed settlement. The Trustees reserve their right to respond to Mr. Devlin's objections to the proposed settlement if and when he raises objections in accordance with the procedure described in the Notice.

ARGUMENT

I. Mr. Devlin Is Not Entitled To Intervene

To intervene as of right, Mr. Devlin must make a timely application to intervene, claim "an interest relating to the transaction which is the subject of the action" and demonstrate that "disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Fed. Rule Civ. P. 24(a)(2). "'The district court is entitled to the full range of reasonable discretion in determining whether these requirements [of Rule 24(a)(2)] have been met.'" *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976) (quoting *Rios v. Enterprise Ass'n Steamfitters Local Union No. 638*, 520 F.2d 352, 355 (2d Cir. 1975)).

Mr. Devlin is not entitled to intervene under Rule 24(a)(2) because his request to intervene is untimely and because Retiree Class representative, Mr. Santoro, and class counsel, Ms. Kraft, adequately represent Mr. Devlin's interests.

A. Mr. Devlin's Motion To Intervene Is Not Timely.

"The purpose of the [timeliness] requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal." *United States v. South Bend Community School Corp.*, 710 F.2d 394, 396 (7th Cir. 1983), *cert. denied*, 466 U.S. 926 (1984). To determine the timeliness of an intervention motion, a "court should look at how far the suit has progressed, the prejudice which delay might cause other parties, and the reason for the tardiness in moving to intervene." *Gould v. Alleco, Inc.*, 883 F.2d 281, 286 (4th Cir. 1989), *cert. denied*, 493 U.S. 1058 (1990). Thus, a key factor courts examine is the proximity of a motion to intervene to a tentative settlement of the action, because of the prejudice the intervention would cause the existing parties. *See Aleut Corp. v. Tyonek Native Corp.*, 725 F.2d 527, 530 (9th Cir. 1984) (motion to intervene as of right was not timely when sought shortly before the parties agreed to a settlement); *County of Orange v. Air California*, 799 F.2d 535, 537-538 (9th Cir. 1986), *cert. denied*, 480 U.S. 946 (1987) (motion to intervene as of right filed a few days after the parties had advised the district court of their settlement was not timely).

In assessing a belated applicant's reason for delay in moving to intervene, courts recognize that "[a] party seeking to intervene must act as soon as he 'knows or has reason to know that his interests might be adversely affected by the outcome of the litigation.'" *United States v. Oregon*, 913 F.2d 576, 589 (9th Cir. 1990), *cert. denied sub nom. Makah Indian Tribe v. United States* 501 U.S. 1250 (1991) (delayed motion to intervene not timely where the potential intervenors inquired about the negotiations concerning the administrative plan settling the action and attempted to participate in the negotiations); *see also County of Orange v. Air California*, 799 F.2d at 538 (motion filed after learning of proposed settlement not timely where potential intervenor should have known that existing parties might settle the action).

Mr. Devlin's motion to intervene is untimely because of the late stage of this proceeding, the prejudice that would result to the existing parties and Mr. Devlin's failure to seek intervention as soon as he had reason to know his interests could be adversely affected. The parties have signed a settlement agreement and a fairness hearing on the settlement has been scheduled for November 12, 1999. The parties are very close to concluding the action. It is simply too late in the proceedings to intervene without undoing the progress that the parties have made over the past two years.

Intervention would, as a practical matter, require the parties to turn the clock back to October 1997, when this case was filed. This would prejudice the parties in two ways. As Mr. Devlin himself has noted, this action already has outlived some members of the Retiree Subclass. Further delay could deprive even more members of the Retiree Subclass of the benefit improvements that would be provided under the proposed settlement. In addition, both plaintiffs and defendants would be harmed by the further and unnecessary expenditure of funds to address Mr. Devlin's belated injunction motion raising issues the parties already have resolved through settlement negotiations.

Moreover, Mr. Devlin inexcusably delayed seeking intervention until long after he had reason to know that his interests might be adversely affected in this action. The Trustees initially named Mr. Devlin as the Retiree Subclass representative in October 1997, and the Court advised Mr. Devlin's counsel at the June 5, 1998 hearing that Mr. Devlin could move for a preliminary injunction in this action. As early as December 1998, Mr. Devlin knew that settlement negotiations had begun. Exhibit H to Affidavit of Robert J. Devlin in Support of Cross Motion ("Devlin Aff."). Mr. Devlin further kept himself apprised of the progress of the settlement negotiations as well as the parties' settlement proposals. Exhibits C, E, F, H to Devlin Aff. Mr. Devlin

even sent a letter to the Court on April 20, 1999, stating his wish to intervene. Exhibit O to Devlin Aff.

Despite Mr. Devlin's full awareness of this ongoing litigation since October 1997, the Court's invitation to Mr. Devlin to file a preliminary injunction in June 1998, Mr. Devlin's knowledge of the parties' efforts to negotiate a settlement since December 1998, and Mr. Devlin's April 20, 1999 letter stating his desire to intervene in this action, Mr. Devlin did not file his motion to intervene until September 10, 1999, days prior to the Court's preliminary approval of the settlement and distribution of notices of the settlement to class members.

This delay demonstrates either an inexcusable lack of diligence in protecting his interests, or a deliberate strategy to delay resolution of this case so that Mr. Devlin can litigate issues in the New York Action, rather than in this Court.

At the outset of this action, Mr. Devlin sought to delay resolution of this case pending a decision in the New York Action. Exhibit B to Devlin Aff. at 5-7. The Court denied that request. *Id.* at 5-6. In seeking to be removed from the case, however, and failing to file a motion to intervene sooner, Mr. Devlin gambled that the New York Action would be resolved first.

On April 13, 1999, the United States Court of Appeals for the Second Circuit upheld the dismissal of Mr. Devlin's claims in the New York Action relating to the 1991 COLA, reversing only on an unrelated issue. Exhibits I and J to Devlin Aff. The Court of Appeals noted that "[i]t seems eminently sensible that the Maryland district court should resolve fully the COLA amendment issue. . . ." Exhibit J to Devlin Aff. at 24. A week later, on April 20, 1999, still attempting to hedge his bet, Mr. Devlin's counsel sent this Court a letter stating that he wished to intervene, but failed to take any action to do so. Exhibit O to Devlin Aff.

Notwithstanding the Second Circuit's rejection of his COLA claim, on remand Mr. Devlin moved to amend his complaint in the New York Action to revive it. That motion, filed on July 9, 1999, is still pending before Judge Keenan of the Southern District of New York.

Only when it became apparent that resolution of this action was imminent, Mr. Devlin filed a motion to intervene. Mr. Devlin now attempts to extend the life of this action, at the expense of all of the parties, by intervening and seeking a preliminary injunction. This tactic to further delay resolution of this case should not be rewarded by granting Mr. Devlin's motion to intervene.

Mr. Devlin tries to take comfort from the Second Circuit's observation that "Devlin and others in his position can be actively involved in the [Maryland] case. *See* Fed. R. Civ. P. 24(b)." Exhibit J to Devlin Aff. at 24; Cross Motion at 13. But when it spoke of intervention in April 1999, the Second Circuit carefully limited its observation to the possibility of permissive intervention under Rule 24(b), a form of intervention that is always subject to the sound discretion of the district court, as opposed to Rule 24(a), which provides for timely intervention as a matter of right. The Second Circuit did not address whether intervention would be appropriate after preliminary approval of a settlement agreement. Clearly, as envisioned by the Second Circuit, Mr. Devlin can be actively involved in this litigation—but at this juncture such involvement should be as an objector to the settlement, not as a party intervenor.

Based on these facts, Mr. Devlin's application to intervene is untimely and should be denied. *See Gould v. Alleco, Inc.*, 883 F.2d at 286.

B. Mr. Devlin's Interests Are Adequately Represented.

Mr. Devlin's request to intervene as of right also should be denied because his interests are adequately represented by

Mr. Santoro, the Retiree Class representative and Ms. Kraft, Retiree Class counsel.

Mr. Devlin challenges the adequacy of representation because Mr. Santoro's son is an officer and trustee of the TCU [1]. Ms. Kraft did not give Mr. Devlin all the information he requested during the settlement negotiations, and Ms. Kraft entered settlement negotiations without first seeking a preliminary injunction and litigating the validity of the 1997 Plan amendment that eliminated the 1991 COLA for the Retiree Class, contrary to Mr. Devlin's wishes. These allegations do not demonstrate as a matter of fact or law that Mr. Devlin's interests are not adequately represented.

"When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the petitioner must demonstrate adversity of interest, collusion, or nonfeasance." *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d at 216 (affirming denial of intervention); *see also Neugebauer v. A.S. Abell Co.*, 77 F.R.D. 712, 714 (D. Md. 1978) (same). Moreover, "[t]here is a presumption of adequate representation when the persons attempting to intervene are members of a class already involved in the litigation or are intervening only to protect the interests of class members." *Jenkins by Jenkins v. Missouri*, 78 F.3d 1270, 1275 (8th Cir. 1996) (rejecting claim of inadequate representation based upon disagreements over the details of the remedy sought).

Mr. Devlin is a member of the Retiree Subclass that Mr. Santoro represents and both Mr. Devlin and Mr. Santoro share the same ultimate objective of restoring, to the extent

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[1] For the sake of clarity, we note that Mr. Santoro's son is a trustee of the union, *not* of the Plan. Accordingly, Mr. Santoro's son has not had any fiduciary responsibility for, or actual involvement in, the conduct of this litigation, other than as a member of the class.

possible, the 1991 COLA benefits. This gives rise to a presumption that Mr. Santoro adequately represents Mr. Devlin's interests. *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d at 216; *Jenkins by Jenkins v. Missouri*, 78 F.3d at 1275.

The fact that Mr. Santoro's son is a TCU officer does not rebut this presumption. To overcome the presumption of adequate representation a potential intervenor "must produce something more than speculation as to the purported inadequacy . . . ." *Moosehead Sanitary Dist. v. S.G. Philips Corp.*, 610 F.2d 49, 54 (1st Cir. 1979). Mr. Devlin has not—and cannot—set forth any evidence that this familial relationship makes Mr. Santoro an inadequate representative, but relies solely upon his own conjecture. Mr. Devlin's conjecture is not a sufficient basis to demonstrate inadequate representation.

Mr. Devlin further alleges that Ms. Kraft breached her duties as class counsel by failing to respond to his repeated requests for information during the settlement negotiations. Mr. Devlin provides no support for this alleged breach of duty other than his own statements in his letters to Ms. Kraft. The same letters demonstrate, however, that Ms. Kraft responded, at least in part, to Mr. Devlin's repeated inquiries concerning the settlement and provided him with substantial information.

Moreover, even if Ms. Kraft had failed to respond to Mr. Devlin's demands for information during delicate ongoing settlement negotiations, this would not support the conclusion that her representation is inadequate. Class counsel's duty to provide information to class members during settlement negotiations is limited. Class counsel, for example, is not required to make counsel competing to represent the class privy to the settlement negotiations since "three cornered negotiations are clumsy at best, especially when one of the corners . . . adopts an obdurate negotiating position." *Mars Steel Corp v. Continental Illinois Nat'l Bank & Trust*, 834

F.2d 677, 684 (7th Cir. 1987). Thus, "[r]ather than attempt to prescribe the modalities of negotiation," this Court should "focus[] on the end result of the negotiations" to assess the adequacy of representation. *Id.*

Ms. Kraft's handling of settlement negotiations has been more than sufficient in these circumstances. Not only has Mr. Devlin repeatedly objected to any settlement of this action, at the time he demanded information from Ms. Kraft he was attempting to obtain an order in the New York Action reinstating the 1991 COLA. And much of the information Mr. Devlin sought was either confidential or irrelevant to this action. Ms. Kraft reasonably could withhold this information from Mr. Devlin because he could have used it to derail the settlement to which he was vehemently opposed or to advance his arguments in the New York Action, to the detriment of the Retiree Subclass. To protect the interests of the Retiree Subclass, Ms. Kraft acted wisely to limit discussions concerning the substance of the settlement to Mr. Santoro and to conduct the negotiations privately. *See Georgine v. Amchem Products, Inc.*, 157 F.R.D. 246, 331 (E.D. Pa. 1994).

Mr. Devlin's claim of inadequate representation is, at base, a complaint that Mr. Santoro and Ms. Kraft followed a different litigation strategy than Mr. Devlin would have chosen. "A mere disagreement over litigation strategy or individual aspects of a remediation plan does not, in and of itself, establish inadequacy of representation." *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (motion to intervene was properly denied because "mere disagreement over litigation strategy or individual aspects of a remediation plan does not,); *see also Chiglo v. City of Preston*, 104 F.3d 185, 188 (8th Cir. 1997) (affirming denial of intervention where city's decision not to appeal adverse decision did not constitute inadequate representation); *B.H. v. McDonald*, 49 F.3d 294, 297 (7th Cir. 1995) (existing party's refusal to

demand open court hearings did not reflect inadequate representation warranting intervention); *United States v. Yonkers Bd. of Educ.*, 902 F.2d 213, 218 (2d Cir. 1990) (state adequately represented its interest and its citizens in choosing not to oppose district court's order; citizens could not intervene to appeal order). Notwithstanding Mr. Devlin's disagreement, the decision to pursue settlement negotiations is a legitimate litigation strategy employed to secure the rights of the Retiree Subclass, and does not constitute inadequate representation or warrant intervention.

II. Mr. Devlin Does Not Meet the Requirements For Permissive Intervention.

An applicant may, in the court's discretion, be permitted to intervene upon timely application and after considering "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed. R. Civ. P. 24(b). As discussed above, Mr. Devlin's request to intervene plainly is not timely. In addition, allowing Mr. Devlin to intervene would unduly delay and prejudice the adjudication of the rights of the Trustees and defendant class. *See generally Norair Eng'g Corp. v. Washington Metro. Area Transit Auth.*, 33 F. Supp. 2d 422, 424 (D. Md. 1998) (denying motion to intervene as unduly prejudicial to the existing parties where potential intervenors raised issues not common to the existing parties that would complicate the case); *Benford v. American Broadcasting Co. Inc.*, 98 F.R.D. 42, 47 (D. Md. 1983) (denying intervention where potential intervenors would only reargue defenses already raised and delay the outcome of the case).

After months of negotiating, the parties to this action reached a settlement in principle, obtained preliminary approval of the settlement and have notified class members of the proposed settlement. Mr. Devlin's attempt to intervene now so that he may re-litigate issues concerning the 1991 COLA decided more than two years ago will delay the

resolution of this case. Delaying resolution of this case could derail the settlement entirely, and would certainly delay the benefit improvements that class members would be entitled to receive under the proposed settlement. For this reason, Mr. Devlin's request for permissive intervention should be denied.

Permissive intervention also should be denied when the potential intervenor will not "significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *H.L. Hayden Co. of New York v. Siemens Medical Systems, Inc.*, 797 F.2d 85, 89 (2d Cir. 1986) (citation omitted); *see also Arney v. Finney*, 967 F.2d 418, 421 (10th Cir. 1992) (permissive intervention properly denied where potential intervenor was a member of the class and his intervention would not aid the class in adjudicating its claims); *League of United Latin Amer. Citizens v. Clements*, 884 F.2d 185, 189 (5th Cir. 1989).

Mr. Devlin is certainly not in a position to assist in the development of the underlying factual issues. For all practical purposes, the factual issues in this case were fully developed, litigated, and decided in the related case of *Scardelletti v. Bobo*, No. JFM-95-52, where the Court concluded that the record developed in extensive discovery did not present any material issues of fact. The reality is that the only issues presented by the present action are pure questions of law.

Similarly, Mr. Devlin is not in a position to significantly contribute to the resolution of the legal issues presented. At the June 5, 1998 hearing, Mr. Devlin's counsel readily conceded that he was unfamiliar with and lacked knowledge concerning the principal legal issue in this case—whether the COLA amendment could be deemed void *ab initio*. Exhibit B to Devlin Aff. at 19-20. Given the representations by Mr. Devlin's counsel at the June 5, 1998 hearing, Mr. Devlin

cannot credibly claim that his intervention would assist in developing the factual issues of this case or in adjudicating the legal questions.

Most importantly, as a member of the Retiree Class, Mr. Devlin will have a full opportunity to raise all of his concerns about the settlement agreement, the negotiations, and the adequacy of the class representatives at the fairness hearing on November 12, 1999, prior to any approval of the proposed settlement. Intervention is not required to achieve that end. Because intervention is wholly unnecessary to allow Mr. Devlin to raise any factual or legal issues concerning the settlement and because of the substantial delay and likely prejudice that would otherwise result, the Trustees respectfully urge the Court to deny Mr. Devlin's motion to intervene.

CONCLUSION

For the foregoing reasons, Mr. Devlin's request to intervene and other relief sought in the Cross Motion should be denied.

DATED: September 23, 1999

/s/ _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' Memorandum in Opposition to Robert Devlin's Motion to Intervene and Response to Cross-Motion was sent by U.S. mail, first-class postage prepaid, this 23rd day of September 1999:

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/s/_____
Lonie Hassel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM 97-3464

R. A. SCARDELLETT, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

AFFIDAVIT OF BRIAN A. JONES
IN OPPOSITION TO THE
PROPOSED SETTLEMENT

STATE OF NEW YORK
COUNTY OF NEW YORK—ss. :

BRIAN A. JONES, being duly sworn, deposes and says:

1. I am an Enrolled Actuary, a member of a number of actuarial organizations and a practicing consulting actuary. I respectfully submit this affidavit in opposition to the proposed settlement.

2. My curriculum vitae is annexed hereto as Exhibit A.

3. This affidavit is based upon my knowledge of, and experience in, the areas of the Internal Revenue Code (the "Code"), and the Employee Retirement Income Security Act of 1974 ("ERISA") in which expertise in the valuation of pension plans is required of enrolled actuaries by the Joint Board for the Enrollment of Actuaries; in particular, §§ 401, 411 and 412. (Unless otherwise specified, all section references are to the Code).

4. The first sentence of § 411 provides in pertinent part that:

> an employee's right to his normal retirement benefit is nonforfeitable[2]. . .upon the attainment of normal retirement age. . .

There is no provision of the Code and its associated Regulations nor any other authority suggesting that an increase to a normal benefit in pay status falls into any category other than fully accrued; § 411 (b) (1) (H), for example, provides for "continuing *accrual* beyond normal retirement age" (emphasis supplied). Thus, the term "accrual" is not in any way inapplicable to enhanced benefits added after retirement. In particular, Treasury Regulation 1.411(d)-4(d), applicable to plan years commencing on or after January 1, 1994, describes "Benefits that are not section 411(d)(6) protected benefits". Cost-of-Living Adjustments ("COLAs") are not included in this list of unprotected benefits. Therefore, Mr. Devlin's COLA benefits, and those of similarly situated employees, are both fully vested and fully accrued.[3]

5. In my opinion, therefore, the COLA feature of the original benefits the purported cancellation of which would be endorsed in the proposed settlement, is simply part of each participant's accrued benefit as defined in § 411 and is

---

[2] A nonforfeitable benefit is fully accrued since it is, by definition, "a percentage of the employee's accrued benefit."

[3] I understand that the view was expressed in an earlier case that the fact that a retiree received a benefit increase after his retirement so that he did not work in anticipation of that increase, somehow took the increase out of the category of "accrued benefit". There is nothing to support this view in the Code nor ERISA nor the applicable Regulations and Rulings, and I understand that that earlier case was settled without any appellate review so that this view does not constitute authority that would be applicable for any purpose including the proposed settlement.

subject to the "anti-cutback" rule of § 411 (d) (6) (A), which provides that:

> A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan other than an amendment described in section 412 (c) (8) . . .

§ 412 (c) (8) provides, in pertinent part:

> . . . No amendment described in this paragraph which reduces the accrued benefit of any participant shall take effect unless the plan administrator files a notice with the Secretary of Labor notifying him of such amendment and the Secretary of Labor [4] has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of Labor unless he determines that such amendment is necessary because of a substantial business hardship as described in subsection (d) (2) and that a waiver under subsection (d) (1) is unavailable or inadequate.

6. It appears that no notice of amendment nor request for such approval has ever been made by the Plan Administrator. It is, therefore, indisputable that the plan sponsor has not met the essential pre-conditions for an amendment reducing accrued benefits: a § 412 (c) (8) application and approval (or failure to act) by the Secretary of the Treasury. Therefore,

---

[4] The Code still reads as above. However, as noted in Treasury Reg. § 1.412 (c) (8)-1,

> The function of the Secretary of Labor described in section 412(c) (8) was transferred to the Secretary of the Treasury as of December 31, 1978, by Reorganization Plan No. 4 of 1978, 1978-1 C.B. 480. Therefore, the notice described in section 412(c) (8) now must be filed as directed by the Secretary of the Treasury.

the Plan has not invoked the administrative procedures which are required to make such an amendment effective.

7. In my opinion, therefore, the fiduciaries of the Plan have violated their fiduciary duties [5] by attempting to by-pass the necessary approval procedure for establishing the continued qualification of the plan, plus the proposed cutback, by filing with the Secretary of the Treasury, and by proposing the settlement herein without having done so.

8. If an application under § 412 (c) (8) were made, the fact that the plan sponsor has satisfied the minimum funding requirements of the Code for at least the last seven years, as shown by the fact that the Forms 5500 show no minimum funding standard deficiency, means that no such waiver is possible. A "waiver" is, by definition, a waiver of a minimum funding standard deficiency which would otherwise trigger excise taxes and other enforcement remedies. It is normally an early sign of problems and possible business hardship. No business hardship is shown in this situation. Therefore, there is no basis for approval of a § 412 (c) (8) application.

9. The fact that the same Forms 5500 show no minimum funding standard credit demonstrates that the plan sponsor has deliberately made the absolute minimum contribution in each of those years and thus has deliberately not built up any flexibility in meeting the minimum funding standard requirements of § 412.

---

[5] § 404 (a) (1) ERISA provides in pertinent part that:

> . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> . . .
>
> (B) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of the like character and with like aims;

10. Any business hardship which may be claimed at this point is attributable to the plan sponsor's failure to provide prudent funding incorporating some margin over the legal minimum.

11. No consideration appears to have been given to other obvious funding alternatives such as, for example, increasing the yield on the assets through better management.

12. Since the original amendments added a COLA feature, benefiting primarily retirees, and eliminated employee contributions without any refunds of prior contributions, benefiting exclusively active employees, one way to more fairly allocate the burden of any proposed cutback in plan cost might be to reinstitute employee contributions or, better, to achieve essentially the same result more tax-efficiently by compensation adjustments and corresponding contributions.

13. In fact, all that has been done, is to arbitrarily cancel the accrued benefits of the most vulnerable participants with the result, in 1998, of overfunding the Plan and eliminating required contributions, as noted at the end of Note 8 (page 9) of the Plan's financial statements attached to the 1998 Form 5500 (Exhibit B annexed hereto.)

14. The proposed settlement is grossly unfair to Robert Devlin and other similarly situated participants in that it asks them to waive, in order to avoid plan termination, all triennial Cost-of-Living Adjustments (COLAs) to which they are entitled which benefits are part of the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC); [6] this in exchange for one 7.5% COLA increase and one of 3.0%.

15. There is simply no reason for these participants who are retirees to fear the plan termination which the employer union is threatening as the only alternative to acceptance of

[6] subject to a five-year phase-in rule for increases effective within five years of any plan termination.

the proposed settlement. They would be far better off if the plan were terminated since the PBGC would recognize, as guaranteed benefits, the COLA benefits which the November 1, 1997 amendment sought to revoke.

16. In light to this, it is incomprehensible to me that counsel purportedly representing Mr. Devlin and other similarly situated participants, but is actually doing so over their objection, would consent to the proposed settlement by waiving, on their behalf, all claim to those benefits.[7]

17. It is clear that under the proposed settlement, the older, retired participants would lose substantial benefits earned by their pre-1991 service. The longer a particular retiree has been on the rolls—and thus, generally, the older that retiree is—the worse the adverse treatment becomes. This is demonstrated in the table annexed hereto as Exhibit C which illustrates the lost benefits by triennial period on the pension rolls, assuming full 10% increments, and also the corresponding loss if actual increments averaged only 8.5%.

18. In both cases, the oldest, most vulnerable retirees are the ones who are penalized most heavily, losing, at the higher

[7] Even if these participants were to be saddled with such "waivers" it is the position of PBGC that those waivers would not be recognized. This clear from such PBGC statements as Opinion 77-125, reading in part:

> As you know, this Corporation administers Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") . . .
>
> The Pension Benefit Guaranty Corporation has interpreted the Act to prohibit the waiver of benefits guaranteed by Title IV of the Act *by a participant who does not own more than 10% of the employer*. To the extent that the proposed indemnification agreement is a prohibited waiver of guaranteed benefits, it may be unenforceable. (*emphasis supplied*)

There is no reason to believe that PBGC would view of the proposed settlement here any more favorably than the waivers which the employer in Opinion 77-125 was seeking to impose on his employees in order to frustrate the benefit guarantees of the Act.

durations, well over half of their entitlement. These retirees are, of course, precisely those whose basic benefit is likely to be relatively low, reflecting the wage levels at which they retired many years ago.

19. Exhibit D annexed hereto shows the trivial improvement in their situation under the proposed settlement: the position of the oldest retiree merely increases from 35 cents on the dollar to 39.

20. Exhibit E annexed hereto demonstrates the far greater improvement in the position of the younger active participants: the expected benefits of the youngest group increases to more than double the current projected amount.

21. Nevertheless, under the proposed settlement, which the actuary retained by the class representative group has estimated will entail a cost outlay of the order of $12 million over the next five years, as shown in his letter, Exhibit F annexed hereto, focuses almost entirely on benefits to active employees, in particular by doubling the future service rate from 1% to 2%, and virtually ignores the older retirees. This level of funding could equally well be used to provide COLA payments for an extended period if the interim relief requested by the retiree group were granted.

22. The Form 5500 for Plan Year 1998 shows on page 8 of the Notes that the sum of $8,486,049 represents the "Surplus represented by the carrying value of assets available for benefits over the total actuarial present value of accumulated plan benefits." By this measure, the Plan is, therefore, overfunded by this amount.

23. This $8.5 million is almost equal to the total employee contributions, with interest, made by the older participants: $7.5 million, as shown on page 7 of the Plan financial statements appended to the 1998 Form 5500.[8] Thus,

[8] Participant contributions were eliminated in January 1988.

substantially all of the employee contributions, made primarily by Mr. Devlin and similarly situated retirees during the pre-1991(?) employment, are, in effect, being applied to support future benefits, not yet earned and payable to currently active, generally much younger, employees.

24. The excess, $8.5 million, of assets over ABO can be viewed as a surplus amount, already on hand, which is now available to offset the cost of future benefit to active employees attributable: (a) to projected salary increases not yet awarded, the $5.2 million difference between PBO and ABO; and (b) to service not yet performed, the $3.3 million difference between assets and PBO.[9]

[9] Note 4. "BENEFIT PLANS" to the most recent Transport Communications International Union Financial Statements (Exhibit G annexed hereto) shows that the position of the Staff Retirement Plan was as follows, as of December 31, 1998:

1. Accumulated benefit obligation (ABO)	$55.3	million
2. Projected benefit obligation (PBO)	60.5	"
3. Fair value of Plan assets	63.8	"
4. Assets in excess of PBO [(3) - (2)]	3.3	"

This means that assets were, as noted above, more than sufficient on the stated actuarial assumptions, to finance all benefits attributable to service to date (ABO); also, to finance those benefits adjusted to reflect the effect of future salary increases that are projected for the active employees (PBO).

WHEREFORE, the proposed settlement should be rejected.

Respectfully submitted,

/s/_____
Brian A. Jones

Sworn to before me this
13th day of October 1999

/s/_____
Notary Public

ARTHUR M. WISEHART
Notary Public, State of New York
No. 02W14937059
Qualified in _____ County
Commission Expires June 13, 2000

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[Oct. 14, 1999]

Re: Civil Action No. JFM 97-3464

I certainly object to the proposed Settlement in Case No. JFM-97-3464. Same being unfair unreasonable and inadequate towards retirees.

Sincerely

Charles O. Swasy
P.O. Box C
Torrance, PA 15779

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM 97-3464

R.A. SCARDELLETTI, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

NOTICE OF OBJECTIONS
TO PROPOSED SETTLEMENT

STATE OF NEW YORK
COUNTY OF NEW YORK—ss. :

ROBERT J. DEVLIN, being duly sworn, deposes and says:

I am a member of the retiree class and a participant in the Transportation Communications International Union Staff Retirement Plan ("Retirement Plan").

I am also the President of the Retired Employees Protective Association ("REPA") of approximately 400 members, some of whom are deceased, which comprise a majority of the persons who are participants in the Retirement Plan who retired prior to the revocation of the Cost of Living portion of the retirement benefit by the plaintiffs herein on or before November 1, 1997.

On behalf of myself and said members of REPA, objection to the proposed settlement is hereby given pursuant to the Order of this Court dated September 14, 1999, and I intend to

appear and be heard regarding my objections and the objections to the proposed settlement on behalf of REPA, which include the following:

For the reasons stated in my Affidavit in Support of Cross-Motion sworn to September 9, 1999, and my Reply Affidavit in Further Support of Cross-Motion dated September 9, 1999, sworn to October 1, 1999, and the documents therein, the proposed settlement should not be considered and a preliminary injunction should be granted to preserve the benefits that retirees had received in the form of COLA adjustments because of the drastic effect which the unilateral elimination of the COLA benefit has had upon them and the irreparable injury shown therein.

Without waiving the foregoing objections, which we respectfully request be determined on a priority basis and a preliminary injunction issued, the additional objections to be the proposed settlement are set forth below.

1. The proposed settlement is objected to for the reasons given in the Affidavit of Brian Jones, an enrolled actuary, and the exhibits annexed thereto, sworn to October 13, 1999.

2. The proposed settlement is unacceptable to myself and the approximately 400 members of REPA whom I represent due to the blatant discrimination in favor of active employees and against the Retiree Subclass that it would entail.

3. Said discrimination in favor of younger active employees and against older retirees is motivated by the purpose of interfering with the attainment of rights which I and the other members of REPA have or may be entitled to under the Employee Retirement Income Security Act ("ERISA"), and is in retaliation against myself, and the members of REPA, in violation of Section 510 thereof. (29 U.S.C. § 1140.)

4. The discriminatory effect and adverse treatment the pre-1991 retirees is shown in the following table which sets forth the effect of the proposed settlement.

Age as of 11/1/97	Pension 10/30/99	Pension 11/1/97	Pension Decrease 11/1/97	% Loss	Proposed 7.50% 1/1/99	Decrease	%	Proposed 3% 1/1/02	Decrease	%
90	$2,594	$1,100	$1,494	57.6	$1,182	$1,412	54.4	$1,217	$1,140	43.9
80	1,772	1,100	672	37.9	1,182	590	33.3	1,217	555	31.3
70	1,331	1,100	231	17.3	1,182	149	11.2	1,217		8.6
60	1,000	1,100	$0	0	1,075	Increase $75	7.5	1,107	107	10.7

ASSUMES INITIAL BENEFIT OF $1,000 PER MONTH and Retirement at Age 60.

All COLA increases are calculated on the basis shown in Exhibit A annexed hereto.

5. In addition, active employees also would benefit from the doubling of accrual rate from 1% to 2% retroactive to January 1, 1995, and reduction of the retirement age to 60 for participants in the active subclass as stated under the Summary Terms of the Proposed Settlement on page 13 of the Notice of the Proposed Settlement filed in the Court on August 27, 1999.

6. The proposed settlement therefore discriminates against older retirees because the proposal seeks to replace a substantial pension reduction for the Retiree Subclass with an adjustment that is much less, as shown in the table above.

7. For those who retired after 1990 but before 1995, the proposed settlement also eliminates their third anniversary COLAs to which they are legally entitled, providing them with only 3 third anniversary COLAs. They are also deprived

of the 10% 5th year anniversary COLA which are provided to the other two classes, the pre-1991 retirees and the active employees.

8. Post 1995 and pre 1999 retiree pensions will be retroactively adjusted to include a doubled 2% accrual factor.

9. Members of the Active Subclass receive in excess of a 10.5% increase in pension benefits when the effect of the 2% accrual factor is considered.

10. The adverse treatment of the retirees as compared with the active employees is as high as 58%.

11. Such adverse treatment of retirees was unnecessary had the Plan assets not been mismanaged by switching the Plan's investments into junk securities in 1998.

12. Had the Plan continued to hold in 1998 the same equity securities it held in 1997, the assets available to the Plan would have increased substantially rather than experiencing the 30% loss that occurred in equity securities for 1998.

13. The plaintiffs herein had a fiduciary obligation to exercise due diligence in managing the investment of Plan funds and should be held accountable for their lack of prudence.

14. TCU's claim of financial inability to maintain the Plan funding is belied by statements made at the 1999 TCU Convention by the plaintiffs herein.

15. International Secretary Treasurer L.E. Bosher reported to the Delegates "Today our Union enjoys its strongest position in over 30 years. We have over $13 million in reserves with an adequate cash flow to operate the Union. In fact, in 1998 TCU's revenue exceed operating expenses by over two-million dollars."

16. The Staff Retirement Plan at the end of 1998 had a surplus of approximately $8.5 million.

17. Significant increases in the Cost of Living Index have had a devastating impact on the standard of living of the older retirees because the largest of those increases occurred after they retired, and were much higher than those in more recent periods.

18. TCU has always used the Consumer Price Index (CPI-W, December to December period) to apply Cost of Living Adjustments.

19. Between 1976 and 1998, the CPI has increased from 58.5 to 160.7, or 175%. Under these figures, a $500.00 pension, adjusted yearly, by the end of 1998, would rise to $1,374.00 just to maintain the same value.

20. In contrast, in recent periods the increase in the CPI since 1991 has been much less, from 132.2 to 160.7, or 22%.

21. Even under the very limited TCU formula, which provides for adjustments every 3 years limited to 10%, a $500 annuity would increase only to $995.00 or 99% between 1976 and 1998. This is 43% less than the dollar amount necessary to maintain the integrity of the value of the original pension.

22. Under TCU's present formula, the same $500 pension of a pre-1991 TCU retiree would amount to just one 10% adjustment, or $550. This is 60% behind the actual increase in inflation that was experienced.

23. Thomas Hewson, age 87, retired in 1974 on a Staff Pension amounting to $647. He had contributed to the pension fund for 20 years.

24. Absent the October 1997 amendment eliminating the COLA, Hewson's pension as of January 1, 1999, would have amounted to $1,331.00, which represents an increase of 95.8%.

25. The October 1997 amendment eliminating his COLA benefit cut his pension by 87.2% to $711, a reduction of $620 per month or $7,440 per year.

26. Had a regular, yearly, bona fide COLA been applied, Hewson's pension would have been $1,988 as of January 1, 1999. In real dollars, his present pension of $711 amounts to only 35% of the actual rise in the cost of living.

27. The adverse impact upon older retirees is shown in my own situation, which is typical of a number of the other older retirees.

28. I retired in 1983 on a monthly pension of $1,702, after having myself contributed to the Retirement Plan for 20 years, in amounts ranging from 3 ¼% to 6 ¼% of my salary, as an employee of the TCU.

29. In other words, during the entire period of my employment, an important condition of the Retirement Plan was that participants had to make direct contributions of a portion of their salaries. The applicable rate was 6 ¼% at the time of my retirement in 1983.

30. This requirement of contributions from active employees remained at 6 1/4% until January 1, 1988, after I had retired, when the Retirement Plan was made non-contributory for active employees.

31. When the requirement that active employees make payments to the Retirement Plan from their salaries was eliminated, the retirees such as myself received nothing additional to reflect the years in which they had been required to make payments to the Retirement Plan. However, the Cost of Living Adjustment was adopted in October 1988, based in large part upon the resources which the contributions of the retirees had added to the assets of the Retirement Plan.

32. This is shown by the fact that, during the years of my employment by the TCU, the contributions that I made to the Retirement Plan totaled $43,529.60.

33. The unilateral action by plaintiffs in this litigation eliminating my COLA benefit is contrary to the fact that I had made those contributions to the Retirement Plan, but active employees no longer were required to do so.

34. Elimination of the COLA had the effect of reducing my pension by $868 per month or $10,416 per year, a reduction of 31% from $2,740 to $1,872.

35. Further, had the COLA benefits fully reflected the effect of inflation, my pension would have been $2,778 per month as of January 1, 1999, but instead as noted above it is currently less than half that amount. In real dollars, my present pension of $1,872 per month amounts to only 67% of the actual rise in the cost of living that I have experienced from the time of my retirement in 1983.

36. However, inflationary changes in the cost of living were also reflected in the salary increases given to active employees during those intervening years. This had a direct effect in increasing the amount of their benefits at the time of retirement since the amount of the pension benefit directly reflects the amount of the salary during the most recent period of employment. However, the salaries paid to myself and others retiring before then did not reflect those such subsequent inflations.

37. The elimination of the COLA therefore has a double adverse impact upon the older retirees: first, because their salary and the related benefits are not based upon subsequent inflation, and second, because the subsequent inflationary adjustments, even though of a very limited nature, have now been taken away.

38. Age discrimination resulting from the adverse treatment of older retired officers and employees of the TCU is wholly attributable to defendant Scardelletti and his regime.

39. The proposed settlement requires the pre-1991 retirees, including myself to waive, in order to avoid plan termination, all 3d year anniversary COLAs to which we are entitled.

40. The inclusion of such a condition in the proposed settlement threatens plan termination if the proposed settlement is not accepted.

41. It is clear that under the proposed settlement, the pre-1991 retirees have the most to lose, for they are the ones who have contributed the most to the Retirement Plan.

42. The older the retiree is, the worse the adverse treatment between the retirees and the active employee becomes.

43. The oldest retirees who are also the most vulnerable, are the ones who are penalized most heavily.

44. The proposed settlement favors the younger, active employees by doubling the future service rate from 1% to 2%, and by reducing the benefits that had previously been contributed to and earned by the older retirees.

45. This level of funding could also be used to provide COLA payments for an extended period of time during which a preliminary injunctions was issued to prevent elimination of the COLA and during which the retirees could pursue their claims with regard to such without feeling financial pressure to accept a discriminatory settlement.

46. The proposed settlement is objected to because it was negotiated by a class representative and an attorney who have conflicting interests and in whom the retirees have no confidence.

47. I have received numerous communications from TCU retirees expressing their outrage, some of which are annexed hereto as Exhibits B to O.

48. The proposed settlement also is objected to upon the disclosures in the deposition of Claude Poulin taken on October 15, 1999, which will be submitted with exhibits when it is available.

49. Among other things, Mr. Poulin confirmed the opinion of Brian Jones that had the COLA benefit continued in 1997 so that the retirees would remain in "pay status" with respect thereto, it was not subject to revocation. Mr. Poulin confirmed that in 1991, before the COLA was eliminated, retirees such as myself would be considered to be in "pay status." It therefore is submitted that the elimination of the COLA was a violation of the fiduciary duties of the present Trustees and also void *ab initio*.

49. Mr. Poulin also confirmed that $7,436,947 held by the Retirement Plan as of December 31, 1998, represents the cumulative contributions plus interest that I and the other retirees had made to the Retirement Plan prior to its discontinuance January 1, 1988, as shown in Note 6 of the 1998 Form 5500 filed by the Retirement Plan with the United States Government (Exhibit P annexed hereto), would be given priority to being used for the benefits of the retirees by the Pension Benefit Guaranty Corporation ("PBGC") if the Retirement Plan were discontinued, but that we would not be as likely to receive such benefits as a result of our own contributions if the Plan is continued.

50. The fact that the retirees have paid for their benefits to the extent approximately $7.5 million whereas the active employees hired after 1997 have paid nothing for any part of their benefits makes the adverse treatment of the retirees and the preferential treatment given to the active employees under the proposed settlement discriminatory in the extreme.

51. Claude Poulin also confirmed that the investments in equity securities by the Retirement Plan in 1998 has produced a loss of 30% or $3.5 million as shown in the Form 5500. Poulin admitted that he had never even heard of any of the equity securities held in 1998 as shown in the Form 5500 whereas, in contrast, under different management the different equity securities held in 1997 as shown in the Form 5500 (Exhibit P annexed hereto), produced a return of 37.9%.

52. In addition, Mr. Poulin admitted that, had the equity securities held in 1998 produced a return consistent with the returns generally experienced on equity securities in that year, instead of a loss, the assets available to the Retirement Plan would have been $6.5 million greater than what was experienced in 1998 as stated in the Form 5500.

53. In addition, Mr. Poulin admitted that he did not know whether the fund manager who had such deplorable results in 1998 had been replaced even yet, or what the investment results for 1999 have been.

54. As a consequence, the members of REPA and I object to the proposed settlement because it is based on or motivated by investment results that are an outgrowth of imprudent investments and management of investments by the Trustees.

55. In addition, the proposed settlement therefore is objected to because it would diminish or impair the ability of the participants or the Plan to proceed against the Trustees to recover for mismanagement and other practices contrary to their fiduciary duties under the release provisions therein.

56. Objection is also made to the proposed settlement because, as shown in the deposition of Claude Poulin, I and other members of the class have been deprived of significant discovery by Mr. Hanrahan, counsel for the plaintiffs, on the ground that we were not entitled to it, and also by Barbara Kraft, Esq., who actively interfered with our discovery rights. This is shown in the Poulin deposition. In my presence Ms.

Kraft refused to answer any questions in a deposition that had been noticed for which she had been subpoenaed regarding significant aspects of the proposed settlement notwithstanding (a) the fact that she was shown to have failed and refused to provide us with substantial information to my own direct knowledge, and (b) the fact that Ms. Kraft admitted at the Poulin deposition that the handwritten notes on the attached letter of April 20, 1999, from the actuary for the Active Subclass that purports to relate to the costs of what the Active Subclass would receive under the settlement proposed by the TCU, were notes that Barbara Kraft herself had made from sources that she refused to disclose, and that she had otherwise refused to explain despite their direct relevance to the financial capacity of the Plan to provide a COLA benefit for retirees as shown in Exhibit Q annexed hereto.

57. For all of the foregoing reasons, and each of them, the terms and conditions of the Settlement Agreement are not fair, reasonable and adequate to the members of the Retiree Subclass.

WHEREFORE, the proposed settlement should be rejected.

Respectfully submitted,

/s/ _____
Robert J. Devlin

Sworn to before me this
16th day of October, 1999:

/s/ _____
Arthur M. Wisehart

Robert J. Devlin will testify as a witness on the subjects referred to in the foregoing Objections and based upon the documents referred to therein and in affidavits previously supplied by him.

Brian Jones, an expert witness, will testify on the subjects set forth in his affidavit submitted herewith, and on the basis of documents referred to therein.

James E. Leonard, C.P.A., an expert witness, will testify concerning accounting and investment issues, and that the assets available for benefits as shown in the Forms 5500 for 1997 and 1998 would have been substantially greater had they been prudently managed.

The deposition of Claude Poulin taken on October 15, 1999, will be offered in evidence with the Exhibits annexed thereto, and filed with the Court when it is available.

Joel Parker, a Trustee, will be called as a witness to testify concerning the investment performance of the assets of the Retirement Plan to date and the subjects referred to in letters to him as shown in Exhibit R annexed hereto, and as to the projected costs to the TCU and contributions contemplated under the proposed settlement.

Plaintiff Scardelletti will be called as a witness to testify concerning the proposed settlement, including the effect of the release provisions therein, and the terms of the settlement in the *Bobo* case.

Plaintiff Bosher will be called as a witness to testify concerning (a) the information in the Forms 5500 for 1997 and 1998 (annexed hereto as Exhibits S and P respectively), (b) projected costs of the proposed settlement to the TCU, (c) the present and anticipated future financial condition of the TCU, and (d) the terms of the settlement in the *Bobo* case.

Settlement to the TCU, and its ability to pay them, and (d) the terms of the settlement in the *Bobo* case.

Anthony Santoro, Sr., will be called as a witness concerning his knowledge of the proposed settlement and about conflicting interests that he and his counsel Barbara Kraft may have as representatives of the Retiree Subclass.

Barbara Kraft will be called as a witness concerning her knowledge of the costs and terms of the proposed settlement, including the release provisions thereof, her services in connection therewith, and in the *Bobo* litigation, and conflicting interests that may require her disqualification in acting as an attorney for the Retiree Subclass.

Dated: October 16, 1999

/s/_____
Arthur M. Wisehart (AMW 4003)

WISEHART & KOCH
19 W. 44th Street, Suite 412
New York, New York 10036
(212) 730-0044

/s/_____
Travis Mastroddi (25164)

KAHN, SMITH, & COLLINS
201 North Charles Street, 10th Floor
Baltimore, Maryland 21201
(410) 244-1010

Attorneys for Robert J. Devlin and the Retired Employees Protective Association

October 7, 1999

Clerk of the U. S. District Court
For the District of Maryland
United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

RE: *Scardelletti vs. Santoro*
Civil Action No. JFM-97-3464

Dear Mr. Monge:

I am a "Retiree Subclass" member who retired prior to January 1, 1991, and whose plan benefits were reduced as a result of the October, 1997, amendment eliminating the 1991 COLA. The reduction amounted to $427.65 per month or a total of $9,835.95 through September, 1999.

As to the proposed 7.5 percent COLA effective January 1, 1999, I find that it would not come close to covering the loss I will have suffered as a result of the elimination of the 1991 COLA.

It is also my understanding that during the 1999 Las Vegas Convention, statements were made by at least two International Officers and the Finance Chairman as follows: ". . . the state of our Union is strong financially", "TCU's financial condition is excellent", ". . . Today our Union enjoys its strongest position in over 30 years . . ." with $13 million in reserve", ". . . TCU's 1998 revenue exceeded operating expenses by over two million dollars!" Therefore, and in view of the facts outlined above, I must object to the proposed settlement.

Very truly yours,

/s/_____
James L. Bailey
260 Eagle Dr.
Panama City Bch, FL 32407-2820

cc: Barbara Kraft
Robert Devlin

Carrollton, IL 62016
October 6, 1999

Clerk of the U.S. District Court
For the District of Maryland
United States Courthouse
101 W. Lombard Street
Baltimore, MD 21201

RE: Scardelletti & Santoro
Civil Action No. JFM-97-3463

Sir:

Upon receipt of an offer from Scardelletti to settle this case pending, I object to this offer and refuse it. He took from us in one lump sum so I want my part of the settlement in one lump sum.

I do not trust this man and have no respect for him. After the past period of time and the happenings I could never trust him. It would seem to me this is written in his favor and not in favor of the retires many of whom have been badly hurt.

Sincerely

/s/ _____
Desmond Frazer
321206470
515 Maple Street
Carrollton, IL 62016

R.A. SCARDELLETTI, *et al.*

Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*

Defendants.

Civil Action
No. JFM-97-3464

Frank L. Monge
Clerk of the Court
United States District Court for the
District of Maryland

I object to the proposed settlement, in the above named class action suit as being unfair, unreasonable, and inadequate. In all fairness to the dedicated retirees, it should not be approved by the court.

/s/_____
Robert A. Parrish
4593 Dogwood Court
Oceanside, CA 92046
(760) (619) 758-1281

Dated: October 4, 1999

Counsel for Plaintiffs:

William F. Hanrahan
Groom Law Group, Chtd.
1701 Pennsylvania Ave., N.W
Washington, D.C. 20006

Counsel for the Active Subclass:

Kenneth Johnson
Tuggle, Duggins, & Meschan, P.A.
228 West Market Street
P.O. Box 2888
Greensboro, North Carolina 27402

Counsel for the Retiree Subclass:

Barbara Kraft
Beins, Axelrod & Kraft, P.C.
1717 Massachusetts Ave., N.W.
Washington, D.C. 20036

Cicero T. Lucas, Jr.
30 Cordova St.
St. Augustine, Florida 32084

October 6, 1999

U.S. District Judge J. F. Motz
101 West Lombard Street
Baltimore, Md. 21201

Re: Case No. JFM 97-3464

Dear Judge Motz:

This letter will serve as my formal opposition to and rejection of the proposed settlement in case No. JFM 97-3464.

This is my brief, but firm, expression of dissatisfaction with the obvious sell-out which this case represents.

Yours very truly,

/s/_____

Cicero T. Lucas, Jr.

cc: R.J. Devlin
342 Fifth Ave.
River Edge, N.J. 07661-1113

cc: Barbara Kraft, Esq.
1717 Massachusetts Ave., N.W.
Suite 704
Washington, D.C. 20036

R.A. SCARDELLETTI, *et al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*
Defendants.

_____

Civil Action No. JFM-97-3464

_____

Frank L. Monge
Clerk of the Court
United States District Court for the
District of Maryland

Referring to the matters described in the above Notice, I find them unethical, despicable, and disgustingly objectionable.

/s/ _____
Miriam E. Parrish
4593 Dogwood Court
Oceanside, CA 92046
(760) (619) 758-1281

Dated: October 4, 1999

Counsel for Plaintiffs:

William F. Hanrahan
Groom Law Group, Chtd.
1701 Pennsylvania Ave. N.W.
Washington, D.C. 20006

Counsel for the Active Subclass:

Kenneth Johnson
Tuggle, Duggins, & Meschan, P.A.
228 West Market Street
P.O. Box 2888
Greensboro, North Carolina 27402

Counsel for the Retiree Subclass:

Barbara Kraft
Beins, Axelrod & Kraft, P.C.
1717 Massachusetts Ave. N.W.
Washington, D.C. 20036

9415 N. E. 32nd Ave.,
Vancouver, Wa. 98665
September 30, 1999

Clerk, United States District Court
For the District of Maryland
101 W. Lombard Street
Baltimore, Maryland, 21201

Re: *Scardelli v. Santoro*
Civil Action No.
JFM-97-3464

Dear Sir:

I am a participant in the Staff Retirement Plan of the Transportation Communications International Union, having retired in August, 1980.

Please consider this letter my objection to the settlement proposed in the above cited case.

Yours truly,

/s/ _____
James H. Groskopf
Dist. 1262

Copy to:

William F. Hanaran
Barbara Kraft
Kenneth Johnson

September 23, 1999

Honorable J. F. Motz
U.S. District Judge
101 W. Lombard Street
Baltimore, MD 21201

Dear Judge:

This has reference to Case #JFM 97-3464 and the proposed settlement sent to me by TCU.

The proposed settlement is an outrage that continues to deny me the means to live a normal life. It appears that all the lawyers and others involved have conflicts that prohibit a just settlement.

I am a plaintiff in a similar lawsuit in New York and this settlement if accepted would deny my rights to a fair trial on the issues.

I object to the proposed settlement.

Yours truly,

/s/ _____
Andrew M. Hagan

Cc: R. J. Devlin-REPA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

C.A. No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

DECLARATION OF DANIEL C. RUDIN

I, Daniel C. Rudin, make the following statements in support of the proposed settlement of this action ("Settlement").

1. I am a Principal in the firm of William M. Mercer, Inc. ("Mercer"), an actuarial consulting firm, and a Fellow of the Society of Actuaries. I am the Enrolled Actuary for the Transportation Communications International Union Staff Retirement Plan ("Plan"). A copy of my *curriculum vitae* is attached hereto as Exhibit R-1.

2. As part of my duties as Enrolled Actuary to the Plan, I supervise the preparation of and certify the results of annual actuarial valuations for the Plan. These valuations are designed, among other things, to determine the annual funding requirements of the Plan for purposes of the minimum funding requirements established under the Employee Retirement Income Security Act of 1974 ("ERISA"). I also supervise the preparation of Schedule B to Form 5500, a report filed annually with the Internal Revenue Service and the U.S. Department of Labor. As Enrolled Actuary to the Plan, I certify in the Schedule B that the Plan has satisfied ERISA's minimum funding standards for the

year to which the Form 5500 pertains. As a result of these duties, I am familiar with the terms of the Plan, its funding status, and the information used to determine the value of benefits accrued under the Plan.

3. In late 1992, I was retained to be the Plan's Enrolled Actuary, effective on January 1, 1993, replacing Robert E. Nemann of Nemann & Associates, who had served as the Plan's enrolled actuary for many years. As a routine function of the transition from one actuarial consulting firm to another, we obtained data for the Plan as of January 1, 1992, and attempted to reproduce the valuation results generated by Mr. Nemann with respect to the 1992 plan year. In addition, we reviewed the actuarial valuation and Schedule B for the 1990 and 1991 plan years. Our analysis of Mr. Nemann's 1991 and 1992 valuations revealed that he had committed material errors in the valuations, principally relating to the cost of an amendment to the Plan that became effective January 1, 1991 ("1991 COLA Amendment"), which provided for both retroactive and automatic future Cost of Living Adjustments ("COLAs") for all participants of the Plan. (The circumstances surrounding the adoption of the 1991 COLA Amendment are described in this Court's opinion in *Scardelletti v. Bobo*, 1997 U.S. Dist. LEXIS 14498 (D. Md., September 8, 1997.)

4. The effect of the errors in the 1991 and 1992 valuations was to understate the total value of benefits under the Plan, and in turn to understate the amount of the minimum annual contributions required by ERISA. The Plan's sponsor, the Transportation Communications International Union ("TCU") had traditionally made contributions to the Plan equal to 17.5% of payroll, an amount that, until the adoption of the 1991 COLA Amendment, was more than sufficient to satisfy ERISA's minimum funding standards. However, we advised the Trustees of the Plan and the TCU that if the existing credit balance in the Plan's funding standard account of $7.7 million

were disregarded, the required minimum contribution for 1993 would be $4.1 million, an amount equal to 31.5% of payroll. We further advised that if the credit balance were applied to satisfy minimum funding obligations, the credit balance would be exhausted in two years.

5. The officers of TCU concluded that the organization could not sustain contributions at such a high level over a long period. Various options were considered to deal with the problem, including a termination of the Plan or a freezing of all accruals under the Plan. TCU selected a third option, and amended the Plan, effective May 15, 1993, to freeze the COLA as it pertains to the future service accrual for active employees. This amendment reduced the present value of projected benefits by $6.2 million, and extended the period under which the 17.5% contribution level would satisfy minimum funding standards by two years, provided that the existing credit balance in the Plan's funding standard account was utilized to offset a portion of the required minimum contributions. This credit balance existed because TCU had made contributions in prior years which were in excess of the required minimum contributions. The 1993 amendment was a remedial effort to address the anticipated funding problems of the TCU Plan. It clearly did not fully restore the Plan to a financially viable status.

6. A valuation as of January 1, 1995 confirmed that further action would be required to restore the Plan to a financially viable status. By this point, the credit balance had been reduced to $723,674, and the required minimum contribution for 1995, after the application of this credit balance, was determined to be $4.1 million, which was equal to 34% of TCU's payroll. This meant that TCU would be required to contribute $2 million more than the $2.1 million that would have been the expected contribution at the 17.5% of payroll contribution rate.

7. To address this situation, on September 14, 1995, TCU's Executive Council adopted a plan amendment which (1) reduced the normal retirement pension to 1% of final average compensation for each year of credited service after January 1, 1995, and (2) increased the normal retirement age to age 62. Prior to the amendment, the normal retirement pension was equal to 2% of final average compensation for each year of credited service, and the normal retirement age was age 60. By reducing the future pensions for active employees in this fashion, the required minimum contribution for 1995, after the application of the credit balance, was reduced to $3.0 million. This amount was equal to 27% of TCU's payroll for the year.

8. For the 1996 plan year, TCU contributed $2,664,391 to the Plan, which was sufficient to satisfy the minimum funding requirement for that year. This amount was equal to 23% of TCU's payroll for the year.

9. For the 1997 plan year, TCU contributed $2,985,538 to the Plan, which was sufficient to satisfy the minimum funding requirement for that year. This amount was equal to 27% of TCU's payroll for the year.

10. During the period from January 1, 1991 through October 31, 1997, the Plan paid of total of approximately $6.5 million in additional benefits attributable to the 1991 COLA Amendment to members of the Retiree Subclass.

11. On September 8, 1997, this Court issued its ruling in *Scardelletti v. Bobo*, in which the Court determined that the 1991 COLA Amendment did not create an accrued benefit for Plan participants who retired or terminated service before the Amendment became effective on January 1, 1991. Thereafter, TCU's Executive Council adopted an amendment, effective November 1, 1997 (the "1997 Amendment"), eliminating the 1991 COLA for participants who retired or terminated service before January 1, 1991. The amendment

also restored, for this group only, a one-time 10% COLA after five years of retirement, which had been superseded by the 1991 COLA Amendment. The effect of the 1997 Amendment was to reduce benefits for pre-1991 retirees to the levels in effect on their dates of retirement, plus 10%. Similarly, vested participants who terminated service with the TCU prior to 1991 would receive pensions equal to the pension earned under the Plan's benefit formula in effect at the time they terminated service, plus a 10% increase five years after they begin to receive benefits.

12. The 1997 Amendment materially changed the funding status of the Plan. One measure of the Plan's funded status is to examine the "unfunded frozen initial liability" at the beginning of each Plan year. The actuarial cost method used to determine the Plan's liabilities is known as the "Entry Age Normal, Frozen Initial Liability Method." At the beginning of the 1997 plan year, the Plan's unfunded frozen initial liability was $14,485,130. The 1997 Amendment reduced this amount by $13,526,574. This reduction, together with the contributions made during 1997, completely eliminated the unfunded frozen initial liability. For purposes of ERISA's minimum funding requirements, the elimination of COLA liabilities for pre-1991 retirees and terminated vested participants meant that the minimum required contribution for 1998 was zero. Nevertheless, TCU contributed $2,017,748 in 1998. This amount was equal to 17.5% of TCU's payroll for the year.

13. Another way to view the funded status of the Plan as of January 1, 1999, is to estimate the cost of terminating the Plan through what is known as a "standard termination." A standard termination involves settling all of a plan's benefit obligations by purchasing annuities from an insurance company, following procedures prescribed by the Pension Benefit Guaranty Corporation ("PBGC"), a U.S. Government agency which oversees the termination of defined benefit

plans and which insures such plans in the event that a plan terminates with insufficient assets to satisfy its liabilities. In May 1999, Mercer actuaries, acting under my supervision, made an estimate of the Plan's liabilities on a standard termination basis under two different scenarios. Under the first scenario, we assumed that the Plan liabilities were only those liabilities under the benefit structure currently in place, that is, with the 1991 COLA eliminated for retirees and terminated vested participants. The second scenario assumed that the Plan was restored to the benefits structure in effect immediately before the 1997 Amendment, that is, that the 1991 COLA would be restored for pre-1991 retirees and terminated vested participants. The results of these estimates are set forth in the table below.

Pre November 1, 1997 Amendment ($Million)	Accrued Benefit	Future COLA	TOTAL
Actives	$ 14.6	$ 0.6	$ 15.2
Post 1990 Terminations	24.7	7.1	31.8
Pre 1991 Terminations	38.7-	12.3	51.0
Total	$ 78.0	$ 20.0	$ 98.0

These liabilities were estimated using the interest and mortality assumptions used in May 1999 by insurance companies to value annuities (5.50%, GA83). The Plan's assets as of January 1, 1999 were $62.8 million dollars. Therefore, to terminate the Plan with it current benefit structure in a standard termination would require TCU to contribute approximately an additional $23.3 million to the Plan to enable it to purchase the kind of commercially-available annuities required by the PBGC. (In a standard termination, PBGC would require the Plan to include in the annuities the value of future COLA increases for the Active Subclass and for Retiree Subclass members who retired or terminated service from 1991 through 1998. Thus, the $78.0 million figure for liabilities would increase by an additional $8.1 million.) If the 1991 COLA were restored for the pre-1991 retirees and terminated vested participants, the additional contribution required to effectuate a standard termination would be approximately $35.2 million.

14. Another method of terminating a defined benefit pension plan is to seek a distress termination from the PBGC. In general, in a distress termination, the employer sponsoring the plan must show that it is undergoing a liquidation or reorganization in bankruptcy and satisfy certain other criteria, or show that continued funding of the plan will render the plan sponsor insolvent. If the PBGC determines that a distress termination is appropriate, it will terminate the plan and assume control of its affairs, and pay certain guaranteed benefits to plan participants. A distress termination also creates a claim by the PBGC against the plan sponsor for the value of benefits that PBGC is responsible for paying to participants in excess of the plan's assets at the time of termination. We have not made a precise estimate of TCU's potential liability to PBGC under the scenario of a restoration of the 1991 COLA benefit for pre-1991 retirees and terminated vested participants followed by a distress termination, but a rough estimate of that liability is that it would be greater than $15 million. The principal reason that this roughly estimated claim is not larger is that PBGC would not treat future COLA increases called for under the 1991 COLA Amendment as benefits that the PBGC would pay.

15. In late 1998, the Trustees of the Plan asked me to conduct an analysis of a variety of settlement proposals that might be made to the Class representatives in this action to allow the Trustees to determine whether the Plan's funding status would make an effort to settle this litigation feasible. After receiving this analysis, the Trustees, through counsel, opened settlement discussions with the Class representatives and their counsel. As those discussions progressed, I was

asked to have prepared cost estimates of various proposals made by the Class representatives and by the Trustees. Settlement discussions continued into 1999, and I directed Mercer personnel to prepare additional cost estimates of various proposals made by the parties.

16. By letter March 31, 1999, I provided the Trustees with a document that set forth the estimated funded status of the Plan as of January 1, 1999, and cost estimates of eight benefits scenarios. These scenarios included the current status of the Plan, the status if the case were litigated to a conclusion favorable to the Retiree Subclass, and scenarios showing the Plan's status under various settlement proposals advanced by the Trustees or by the Class representatives. A copy of this document is attached hereto as Exhibit R-2.

17. The cost estimates contained in Exhibit R-2 were performed using three different measures of the liabilities of a pension plan. The Present Value of Benefits ("PVB") is the total value of benefits that are expected to be paid by the Plan for existing participants, and includes a projection of all service and salary credits to expected termination, or retirement. The difference between the Present Value of Benefits and the current value of the Plan's assets is the present value of future contributions that the plan sponsor will need to make over time. In contrast, the Present Value of Accumulated Benefits ("PVAB") is the value of all benefits that have been earned to date, based on service credits and salary earned as of the determination date. This would be the value of benefits payable if all employees terminated their employment on that date. Both the PVB and the PVAB are calculated using the assumptions adopted by the actuary for use with the plan's funding method. The PVA and the PVAB estimates in Exhibit R-2 were calculated using assumptions as set forth in the Form 5500 for the 1998 Plan year.

18. The third measurement of the liabilities of a pension plan is referred to in Exhibit R-2 as "RPA '94 Current

Liability" or "RPA94 CL." This is a reference to the Retirement Protection Act of 1994, which modified ERISA's existing minimum funding requirements by establishing a standard minimum funding requirement that all plans must satisfy. In general, RPA '94 requires the plan's enrolled actuary to calculate the plan's liabilities using certain mandated interest and mortality assumptions prescribed by the Internal Revenue Service for all plans. Once the plan's liabilities are calculated using these assumptions, the actuary determines the plan's "funded ratio," that is, the ratio of the plan's liabilities to its assets, determined as of the beginning of the plan year. If the plan's funded ratio falls below certain statutory benchmarks, then additional funding requirements are triggered, and the plan's sponsor is required to make larger contributions in order to fund the plan's liabilities at a faster rate than would be required under the general minimum funding requirements. If a plan's RPA '94 funded ratio falls below 90% in the current plan year and for two of the three years prior to the current plan year, the additional funding requirements are triggered, and the level of required contributions will be substantially higher than under normal minimum funding rules. Consequently, for purposes of the settlement discussions in this litigation, the most important measure of the Plan's liabilities was the RPA '94 Current Liability, because that liability determines the rate at which the Plan would have to be funded if the settlement, or the litigation, results in higher levels of benefits becoming payable under the Plan.

19. The effect of the RPA '94 Current Liability can be illustrated by comparing the RPA '94 funded ratio of the Plan as it currently exists, that is, with the reduction of liabilities caused by the 1997 Amendment, with the RPA '94 funded ratio of the Plan if the 1997 Amendment were rescinded and the 1991 COLA Amendment were restored for pre-1991 retirees and terminated vested participants, as might happen if this case were litigated to a conclusion and the Retiree

Subclass prevailed. Under the current Plan, the RPA '94 funded ratio is 92.1%, that is, the assets of the Plan on January 1, 1999 of $62.8 million are equal to 92.1% of the Plan's liabilities of 68.2 million. If the Plan's existing credit balance in the funding standard account is used to offset a portion of the required minimum contributions the projected minimum contributions from 1999 through 2002 are set forth in the table below (in millions). In contrast, if the 1991 COLA Amendment were restored for the pre-1991 retirees and terminated vested participants, the RPA '94 funded ratio of the Plan would be 72.9%, reflecting total liabilities of the Plan of $86.2 million. The projected minimum cont5ributions under this scenario (again using the credit balance to offset a portion of the contributions) are as set forth in the table below (in millions). Finally, for purposes of comparison, the projected minimum contributions that would be required under the Settlement (again using the credit balance to offset a portion of the contributions) are as set forth in the table below (in millions).

	Current Plan	Settlement Plan	1991 COLA Amendment Restored
1999	$0.0	$0.0	$5.7
2000	$0.0	$0.3	$7.7
2001	$0.0	$5.8	$6.8
2002	$4.6	$5.2	$5.7
TOTALS	$4.6	$11.3	$25.9

20. During the course of negotiations, the trustees and the Class representatives made a series of proposals that called for benefit changes for each of the various groups within the Subclasses. The Trustees rejected the proposals advanced by the Subclass representatives because those proposals, in combination, lowered the Plan's RPA '94 funded ratio to well

below 90% in 1999, and would, if adopted, have triggered substantial increases in the projected minimum contribution obligations over the next four years. Similarly, the Class representatives rejected proposals advanced by the Trustees that would have put the Plan's 1999 RPA's funded ratio at 91% or better and which would have postponed until 2003 or 2004 the imposition of RPA '94 required additional contributions. Ultimately, the parties reached agreement on a set of benefit changes that will put the Plan's RPA '94 funded ratio at slightly below 91% as of January 1, 1999, and that are projected to require additional contributions under RPA '94 beginning in 2001, assuming the existing credit balance is used to offset minimum contributions until it is exhausted.

21. The cost estimates and contribution projections set out in Exhibit R-2 are based on various assumptions about interest rates, changes in assets, and mortality. If the settlement is approved, and the Plan's benefit structure is changed as provided in the Settlement Agreement and Release, the Plan's actual experience may be different from what is assumed in the cost estimates. There is a risk, for example, that if the Plan's rate of investment return varies from the assumed long-term 8% rate of return, as can be expected when viewed over a relatively short time frame such as four years, the Plan's RPA '94 funded ratio may be different from year to year than assumed in the projections. This, in turn, could trigger additional contribution requirements earlier than anticipated.

22. The Settlement Agreement and Release provides for different benefit modifications depending on each Plan participant's date of retirement or termination of service. Members of the Retiree Subclass who retired before January 1, 1991, will receive a 7.5% increase in their current benefit amounts, effective January 1, 1999. Because the settlement will not become effective until it receives final approval from the Court, and all appeals have been

exhausted, the benefit increases that will become payable for the period from January 1, 1999 through the date of final approval will be paid in a lump sum after the effective date. Thereafter, a second benefit increase of 3.0% in their then-current benefits amounts will go into effect on January 1, 2002.

23. The effect of these benefit increases for pre-1991 retirees can be illustrated by examining the impact on Robert J. Devlin, who retired in 1983 at age 58, and who has expressed various objections to the settlement. When he retired, at a time when the Plan did not provide for any kind of post-retirement COLA, Mr. Devlin began receiving a monthly pension of $1,702.58. That pension was increased, beginning on January 1, 1989, by 10%, in accordance with the one-time 10% COLA after five years of retirement provision added to the Plan in 1988. Thereafter, beginning on January 1, 1991, his pension was increased in accordance with the 1991 COLA Amendment. As of October 1, 1997, he was receiving a monthly pension of $2,449.69. Effective on November 1, 1997, in accordance with the 1997 Amendment, his monthly pension was reduced to $1,872.84. If the settlement is approved, his monthly pension will increase by 7.5% to $2,013.30, effective on January 1, 1999. Assuming that the effective date of the settlement is December 31, 1999, he would be entitled to a lump sum payment of $1,685.52. Finally, his monthly pension would increase an additional 3% on January 1, 2002, to $2,073.70. This amount represents a 22% increase over his original benefit amount of $1,702.58, payable at the time he retired. This total percentage increase represents the combined effect of the 1997 Amendment's restoration of the 10% after five years of retirement COLA and the increases called for in the Settlement Agreement and Release.

24. Thomas Hewson is another pre-1991 Retiree Subclass member who has objected to the Settlement. Mr. Hewson

was born in 1912, and retired from TCU in 1974. At the time he retired, his monthly pension was $646.74. On January 1, 1989, his monthly pension was increased to $711.41. On January 1, 1991, his monthly pension was increased in accordance with the 1991 COLA Amendment. As of October 1, 1997, he was receiving a monthly pension of $1,238.54. Effective on November 1, 1997, in accordance with the 1997 Amendment, his monthly pension was reduced to $711.41. If the settlement is approved, his monthly pension will increase by 7.5% to $764.77, effective on January 1, 1999. Assuming that the effective date of the settlement is December 31, 1999, he would be entitled to a lump sum payment of $640.32. Finally, his monthly pension would increase an additional 3% on January 1, 2002, to $787.71. This amount represents a 22% increase over his original benefit amount of $646.74, payable at he time he retired. This total percentage increase represents the combined effect of the 1997 Amendment's restoration of the 10% after five years of retirement COLA and the increases called for in the Settlement.

25. Under the Settlement, Retiree Subclass members who terminated service with TCU before January 1, 1991, and who have vested benefits payable at some time in the future will receive a 5% increase in their normal retirement pension on the date their benefits commence, and will receive a second 5% increase on the first anniversary of the date their benefits commence. For example, one Retiree Subclass member, referred to here as RDP, worked for TCU from 1976 until 1984. He is currently age 54. His monthly benefit payable at retirement is $302.53. However, under the Settlement, that amount will increase by 5% on the date he elects to receive a pension to $317.66, and will increase by another 5% to $333.54 one year later. The total increase in his monthly benefit is equal to 10.25% of his monthly benefit without the settlement. As specified in the 1997 Amendment, he will receive a final 10% increase to $366.89 on the fifth anniversary of his benefit commencement date. The total

increase in his monthly benefit after five years of retirement is equal to 21% of his normal retirement benefit.

26. Under the Settlement, Retiree Subclass members who retired or terminated service after January 1, 1991 and before January 1, 1999, will receive COLAs on the third, six and ninth anniversaries of their benefit commencement dates. The amount of each increase will be equal to the increase in the Consumer Price Index in the three calendar years preceding the anniversary date, but not more than 10%. For example, one Retiree Subclass Member, referred to here as BH, retired and began receiving a monthly pension of $3,208.20 on July 1, 1991. She received an increase in her monthly pension amount of 8.1% on July 1, 1995, and a 7.3% increase on July 1, 1998. At present, her monthly pension is $3,721.23. Under the Settlement, she will receive a third and final increase of not more than 10% on July 1, 2001. Assuming she receives the full 10% increase, her final monthly pension amount would be $4,093.36. If this action were litigated to a conclusion unfavorable to the Retiree Subclass, her monthly pension would revert to $3,208.20

27. Members of the Active Subclass are those who were employed by TCU on or after January 1, 1999. In 1995, their future benefit accrual rate was reduced from 2% of final average compensation for each year of service under the Plan to 1%. In addition, their normal retirement age was increased from age 60 to age 62. Under the Settlement, their benefit accrual rate will be retroactively restored to 2%. However, the Settlement does not restore the normal retirement age to age 60. Thus, under the Settlement, should a member of the Active Subclass wish to retire at age 60, he would be treated under the Plan as electing an early retirement pension. Early retirement pensions under the Plan are reduced by ½% per month for each month the benefit commencement date precedes normal retirement age.

28. The effect of the Settlement on the Active Subclass can be illustrated by considering the circumstances of a member of the Active Subclass, referred to here as RA, who began earning credited service under the Plan in 1988 at age 41. His annual salary in 1998 was $45,619, and for purposes of this illustration, it will be assumed that that will be his final average salary when he elects early retirement at age 60, with 19 years of credited service. Under the Plan formula now in effect, his monthly early retirement pension at age 60 would be $970.16. Under the Settlement, his monthly early retirement pension would be $1,271.25. However, under the Plan terms in effect immediately prior to the adoption of the 1991 COLA Amendment, his normal retirement pension payable at age 60 would have been $1,444.60.

29. The Settlement contains other provisions for the benefit of the Active Subclass. The Settlement prohibits TCU from amending the Plan to provide any other benefit increases, except increases required by law, until (1) the Plan is amended to change the normal retirement date under the Plan to age 60 for all members of the Active Subclass, with a retroactive payment for any member of the Active Subclass who, prior to the amendment, retired before attaining normal age; and (2) the Plan is amended to provide a COLA for all members of the Active Subclass equal to 10% of the member's retirement benefit beginning on the fifth anniversary of the member's retirement. These potential benefit improvements represent elements of the Plan's benefit formula in effect immediately before the adoption of the 1991 COLA Amendment that could not be restored under the Plan at this time because the cost of these improvements would push the Plan's RPA '94 funded ratio for 1999 below the 90% threshold. The prohibition on other benefit improvements under the Plan is designed to encourage TCU to restore these elements of the pre-1991 benefit formula for the Active Class at such time as the Plan is able to sustain these

additional benefits. However, the provision does not bind TCU to make these benefit improvements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November __2nd__, 1999.

/s/_____
Daniel C. Rudin, F.S.A.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
PAUL W. GRIMM
UNITED STATES MAGISTRATE JUDGE

101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-4560
(410)962-3630 FAX

August 6, 1999

RE: *Scardelletti v. Santoro* JFM-97-3464

MEMORANDUM FOR COUNSEL

Dear Mr. Hanrahan:

Thank you for faxing me the status letter outlining the settlement progress. I have forwarded it to Chief Judge Motz, and I expect to be back to you very shortly to advise you to forward copies of the agreements and proposed class notice to me to submit to Judge Motz for preliminary approval and the scheduling of a fairness hearing.

As I told Judge Motz, it was a privilege for me to see parties with real differences on significant issues, represented by excellent counsel, sit down at the table and set emotion aside, and craft a fair agreement, albeit one which required them to make personal sacrifices. You are all to be commended.

/s/_____
Paul W. Grimm
United States Magistrate Judge

cc: Chambers settlement file

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

C.A. No. JFM-97-3464

R. A. SCARDELLETTI, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

DECLARATION OF BARBARA KRAFT

1. I am the attorney for the Retiree Subclass in this litigation. The Retiree Subclass consists of approximately 486 employees who retired or terminated their service under the Transportation Communications International Union (TCU) Staff Retirement Plan ("the Plan") prior to January 1, 1999 and their beneficiaries.

Factual Background and Commencement of Representation

2. In early July 1998, TCU General Counsel Mitchell Kraus and Plan Attorney John A. Edmond informed me that the Plan's Trustees had sued its former Trustees in this Court for breach of fiduciary duty, arising out of an amendment to the Plan providing for a cost-of-living adjustment (COLA) effective January 1, 1991 and recommended by the former Trustees to the TCU Executive Board in late 1990. Mr. Kraus and Mr. Edmond also informed me that, as a result of this Court's decision in September 1997 in that lawsuit that the COLA was not an accrued benefit as to pre-1991 retirees, the current Plan Trustees had filed another lawsuit seeking a declaratory judgment that the COLA amendment was null and void because it was adopted as a result of the former

Trustees' breach of fiduciary duty. Mr. Kraus and Mr. Edmond advised that the current Trustees had named as defendants in this second lawsuit a class of all retired and active participants in the Plan, and designated Robert J. Devlin, a TCU retiree who opposed elimination of the COLA, as class representative. They further informed me that Mr. Devlin had declined to serve as class representative, and that another TCU retiree, Thomas Diehl, was willing to serve as class representative.

3. Mr. Kraus and Mr. Edmond asked me if I was willing to undertake representation of the retired participant group in this class action lawsuit. Both Mr. Kraus and Mr. Edmond were unequivocal in stating that TCU would expect my representation to be zealous and uncompromised. They also stated that the current Trustees planned to try to negotiate a settlement of this second lawsuit. I told them I was willing to consider representing the retirees. When I inquired as to the terms of my firm's compensation for this representation, Mr. Kraus informed me that the TCU would pay my legal fees and expenses. After considering Mr. Kraus' and Mr. Edmond's proposal and researching whether representing the retirees while being compensated by TCU was consistent with my ethical responsibilities, I agreed to the representation.

4. I later met with Mr. Diehl and discussed at length with him his role as class representative in this lawsuit and my role as attorney. He and I spoke again within a few days of our first meeting. Several days later, Mr. Diehl called to advise me that he had decided against serving as class representative in this case. Shortly thereafter, Mr. Kraus introduced me to Anthony P. Santoro, Sr., a TCU retiree who also opposed elimination of the COLA. After discussing our respective roles, Mr. Santoro and I agreed that he would serve as class representative and I would act as the attorney for the retirees.

* * *

Settlement Negotiations

8. In late October 1998, I met with Mr. Kraus and Mr. Hanrahan to discuss a possible settlement of this case. At around the same time, I spoke with actuary Claude Poulin, and secured his agreement to assist me and Mr. Santoro in evaluating and making settlement proposals in the case. Mr. Poulin is a widely respected and experienced actuary who has considerable experience with unions and union retirement plans, and has been actively involved on behalf of participants and unions in challenging benefit cutbacks, including employer conversions of traditional defined benefit plans to cash balance plans. At the late October meeting, plaintiffs' counsel proposed a settlement consisting of a one-time 5% COLA for pre-1991 retirees and terminated vested employees, and two (2) third-anniversary COLAs for post-1991 retirees and terminated vesteds. The cost of the proposal, along with three other benefit outcomes—maintaining then-current benefit formulas, eliminating the COLA for post-1990 retirees in the event plaintiffs prevailed in this litigation, and adding a 5% COLA for pre-1991 retirees only—was presented in an October 2, 1998 report of a benefits study prepared by the Plan's actuarial consultant, William M. Mercer. I shared these and copies of subsequent Mercer cost estimates with Mr. Poulin and Retiree Subclass member Robert J. Devlin.

9. In December 1998, I notified Mr. Hanrahan that I had rejected TCU's initial settlement proposal. At the same time, I proposed a counteroffer which provided for much more generous increases for both pre-1991 and post-1990 retirees and terminated vested employees. In late January or early February 1999, I called Mr. Hanrahan to inquire about the plaintiffs' response to my December 1998 counteroffer. Shortly thereafter, Mr. Hanrahan advised that plaintiffs had

rejected my counteroffer. Later in February, 1999, the parties' counsel and their actuaries met at Mr. Hanrahan's office to continue to discuss settlement.

10. At that February 1999 meeting, TCU presented a revised proposal that increased the present value of benefits for the pre-1991 group by $1.9M over the then-current plan terms (assuming this Court's September 1997 ruling would be sustained on appeal), and about $700,000 over its original proposal. For this older group, the present value of benefits under TCU's revised proposal was about $10M less than if the Retiree Subclass were to succeed in reversing this Court's September 1997 decision, and about $3M less than my counteroffer. TCU's revised proposal also increased the present value of benefits for the post-1990 group by $3.3M over what that group would receive if TCU prevailed, or about $1M more than under TCU's original proposal. TCU essentially accepted my counteroffer for this group, *i.e.* 3 third-anniversary COLAs; the present value of accrued benefits for this group was $20.6M.

11. The parties continued settlement discussions in February and March 1999. In late March, I made another counterproposal demanding more on behalf of the Retiree Subclass, based in part on the belief that an intervening Supreme Court decision bolstered the Retiree Subclass' position. My second counterproposal was essentially a make-whole proposal that would have increased the present value of benefits for the Retiree Subclass by about $14M. Plaintiffs' counsel rejected that second counterproposal several days later. At around the same time, this Court invited the parties to participate in settlement discussions with the assistance of Magistrate Judge Paul Grimm. The parties met with Magistrate Grimm three times, in April and May. On behalf of the Retiree Subclass, I agreed at our last meeting with Judge Grimm to accept as a settlement of this litigation the benefit improvements set out in the Settlement Agreement and Notice.

* * *

The Retiree Subclass Has Been Adequately Represented

22. During the course of this litigation, I have kept Mr. Santoro informed of all substantive developments. He has actively encouraged me to pursue a settlement that would result in members of the Retiree Subclass receiving benefit improvements as soon as possible, and in a manner that would not result in termination of the Plan. At the same time, Mr. Santoro and I agree that we are prepared to litigate this action and appeal any adverse rulings of the Court which we believe should not stand.

23. I also made every attempt to inform Robert J. Devlin of the status of settlement discussions in this case. I provided Mr. Devlin and his attorney, Arthur M. Wisehart, with information made available to me during settlement negotiations, including plaintiff and Retiree Subclass settlement proposals, Plan valuations, cost estimates and other documents prepared by William M. Mercer, the Plan's actuarial consultants, and documents related to the *Bobo* litigation.

24. In agreeing to the proposed settlement, I was mindful of potential claims of Subclass members arising out of matters other than the elimination of the COLA. Two such claims came to my attention: Mr. Devlin's claim that the current Trustees had breached their fiduciary duty as a result of their poor oversight of one or more investment managers; and Clay B. Wolfe's claim that the Plan had erroneously treated him as having retired prior to 1991 for purposes of the COLA. I advised both Mr. Devlin and Mr. Wolfe that, in my opinion, neither claim was barred by the release in the proposed settlement agreement. I advised Mr. Wolfe that the Plan would undoubtedly assert other defenses to his claims.

25. Shortly after the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing was sent

to class members in September 1999, I received phone calls and written inquiries from members of the Retiree Subclass about the proposed settlement, as well as written objections to the proposed settlement. I had one or more lengthy and substantive phone conversations with 10 class members. Some of the Subclass members I spoke to were angry that, in 1993, the Plan had changed the valuation factors used to calculate the joint and survivor annuity form of benefit. Many also objected to TCU's decision to charge retirees for a portion of their health insurance cost. I attempted to explain that these benefit changes were unrelated to the issues in this case. Eight of the 10 individuals indicated they did not object to, or supported, the proposed settlement.

26. Retiree Subclass member Clay B. Wolfe objected to the proposed settlement on the basis that the Plan had treated him as a pre-1991 retiree when the COLA was eliminated in November 1997 for pre-1991 retirees, after having treated him as a post-1990 retiree for purposes of the 1993 change in actuarial factors that reduced his monthly joint and survivor annuity benefit in order to account for the COLA. I requested of Plan counsel that the Plan treat Mr. Wolfe as a post-1990 retiree and informed him of my belief that Mr. Wolfe was correct in stating he was a post-1990 retiree. The Plan rejected my request and, through counsel, informed me that Mr. Wolfe's claim that the Plan had erroneously determined his retirement date as December 31, 1990 rather than January 1, 1991 was not barred by the release.

27. I have been practicing law in the employee benefits area since approximately 1987, when I began working on single-employer plans for exempt organizations. In that same year, I received a Master of Laws in Taxation from Georgetown University Law Center. In addition to benefits law, I have been practicing labor and employment law on behalf of unions and individuals since 1980, after 2 years in the Appellate Court Branch of the National Labor Relations

Board in Washington, D.C. I have represented employees in class actions involving COBRA continuation coverage, valuation of account balances under terminated defined contribution plans, and Equal Pay Act violations. My practice also includes advising and litigation on behalf of multiemployer pension and health and welfare funds, single-employer plans, joint labor-management plan administration committees, and plan participants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

Civil Docket No. JFM-97-3464

R. A. SCARDELLETTI, *et. al.*,
Plaintiffs,

v

ANTHONY SANTORO, *et. al.*,
Defendants.

Baltimore, Maryland
November 12, 1999
11:30 a.m.

TRANSCRIPT OF FAIRNESS HEARING
BEFORE THE HONORABLE J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

THE COURT: All right. I have reviewed the extensive memoranda and supporting papers that been filed in connection with this case and I certainly do not want to hear direct testimony from those who have submitted affidavits and frankly, I'm not sure what's left to be said by the presentation of testimony. Mr. Wisehart—

MR. WISEHART: May I respond to that, Your Honor?

THE COURT: All right. You can respond. I suggest you be careful in what you say today. I don't like what you've done in this case in terms of attacking counsel and I suggest that you not make any oral attacks here or you're going to have my ire expressed to you. I deny your Motion to Intervene. It is absolutely untimely. Writing letters to me—I

don't have to respond to letters from counsel. If you wanted to file a Motion to Intervene, you should have filed a Motion to Intervene. You never did it. I'm certainly going to hear the objections that have to be made. That's what a fairness hearing is all about. But there's absolutely no indication to me that there was collusion between the lawyers. The fact that the person who was appointed's father is still with the T.C.U. makes no difference to me whatsoever. I find no basis for collusion. There is absolutely no reason for you to intervene. You as I recall it were given a chance to—you were here and you opted out, "opted out" of representing this subclass a long time ago. I gave you a chance to be here and all you're doing now is to try to come back and throw a monkey wrench in things. And Mr. Wisehart, I don't like what you've done and I will tell you that. I've read the papers and I just suggest to you to be very careful because I have a temper and I don't want to lose it with you. And if there's anything you had to add to what's in the papers, I'll hear from you. But if you simply repeat what you've said that I've reviewed, I reject it and I deny your Motion to Intervene. You're here not as a party. You are here representing an objector. So let's be clear exactly what the tone of this hearing is going to be vis-à-vis you and me.

MR. WISEHART: Very well, Your Honor. What as an objector I would propose subject to Your Honor's desire is to put Mr. Devlin on as a witness to talk about his personal knowledge of when the COLA was adopted.

THE COURT: I don't need that. I know that from the papers. That's a waste of my time.

* * *

MR. WISEHART: As you know that I was not involved in Bobo, Your Honor. And the fact is that Bobo was settled and the result of the settlement did not cast in concrete the decision that was reached by Your Honor and Mr. Devlin's

testimony was not heard and these would be factual issues that would present new evidence. As far as I can tell, Your Honor, with all due respect—

THE COURT: If you had wanted to do that, you should have filed a proper Motion to Intervene at the appropriate time and you didn't do it and you can't come in here now at this late moment and do it.

MR. WISEHART: Your Honor, you had already made that decision before I even knew about it—

THE COURT: No. If you had wanted to get involved in these proceedings. You're trying to raise it now and introduce new evidence. You should have done it back, you know, when you're writing me letters. The federal judges are too busy to respond to letters, argumentative letters from counsel.

MR. WISEHART: My client did not have the funds. You were told that. You knew that. I respectfully say—

THE COURT: You had an opportunity to be here and chose not to pursue this. For whatever reason, you didn't want to do that.

MR. WISEHART: I didn't have the funds to do that.

THE COURT: Whatever reason you chose not to be here, you chose not to be here.

MR. WISEHART: You were told—

THE COURT: Mr. Devlin had been selected. And don't overtalk me. We've got a court reporter here.

MR. WISEHART: We did not have the funds to do that and you were so advised.

THE COURT: My recollection was you said that you didn't have the expertise. But my recollection might be hazy on that.

MR. WISEHART: Well, after—you asked me if I could take on the issue of whether or not the benefit was initially put on as a matter of, was void when it was initially put on. And I said I didn't have the background in that issue. And in responding candidly to your question, you said all right, I want that issue aggressively litigated. And you said that I should not appear for the class. That's the way it went.

* * *

MR. WISEHART: What I want to say is that financially there does appear—now I do know that Your Honor wants to do equity in this case and I appreciate and understand that, Your Honor. But from the financial records that we have available, it appears to us that instead of trimming the past COLA's to the drastic extent that has been done, the COLA could be made differently and there could be funds made available for that purpose. There are several options that are available.

* * *

THE COURT: Okay. I reject that as a basis for rejecting the settlement. It's speculative and I'm not going to consider it. I don't think that kind of speculation should come in to me approving the settlement. So if I'm wrong, you got an appeal. I think that that is not a matter which has sufficiently matured to be able to, for me to be able to consider adequately today.

MR. WISEHART: All right.

THE COURT: And not for me to consider adequately, but to consider it as a basis for not approving the settlement.

MR. WISEHART: Well, then I have another option, Your Honor. The affidavit that has been submitted by Mr. Rudin, the actuary, refers in paragraph 13 to going to the voluntary termination route through the Pension Benefit Guarantee Corporation. But there is another alternative. And the other alternative which is set forth in the statute is called a distress

termination. A distress termination I'm informed is not a difficult thing to do. The statutory criterior have been relaxed to the extent that if the debts of the sponsoring entity appear to be insufficient to pay its obligations, they can go to the PBGC. And as I understand the procedure, it's a well-settled procedure. There is a form you use and the PBGC responds within 60 days. And what the PBGC does is decide whether or not the assets are sufficient to pay the liabilities of the pension plan. And if it is not, then the PBGC acts as an insurance agency. The pension plan has been paying premiums all these years to the PBGC. It's $19 per employee per year plus an adjustment depending upon the circumstances. And if the pension plan qualifies for treating this as a distress termination, then the PBGC pays the amount needed to fund those benefits. Now this gets to the question of whether or not these would be considered an accrued benefit.

THE COURT: That is an issue that has been decided and that for purposes of determining—we're not going to revisit that.

MR. WISEHART: No. I'm not asking—

THE COURT: What's important here is that counsel have gauged their litigation risk and based upon the rulings I have previously made.

MR. WISEHART: I'm not asking that you do that. I'm suggesting something that I think might appeal to you as being pragmatic. The PBGC was not a party to this litigation at any time. I am informed that under the PBGC's practices, that it would consider this COLA to be an insurable benefit. If that is true and since these premiums have been paid, then it would seem to me that the fiduciary duty is on the plan sponsor to seek to avail itself of that guarantee and it will not cause any disturbance of these proceedings if that application were made to the PBGC. And the PBGC could make a determination.

* * *

THE COURT: All right. Well, let me hear from Mr. Hanrahan about this distress termination and recovering and having the pension board pick up their tab.

MR. HANRAHAN: Good morning, Your Honor. A distress termination requires that the plan sponsor either be in bankruptcy or be on the brink of bankruptcy as a result of attempting to maintain the plan. In 1994, we approached PBGC to talk with them about whether there was some kind of means of terminating the plan that would deal with the COLA and would allow the surviving sponsor to continue in existence. Their answer in 1994 was that if the plan were terminated in a distress termination, by their estimate, they would have a claim of approximately $16 million against the plan sponsor for guarantee benefits. They didn't get into the question of the additional claim they would have for benefits in excess of the guarantee which if they could recover they would be able to pay. I think they realized then, I think they realize now because we've kept them informed of the progress of this case, including the settlement, that the settlement is the appropriate way to resolve this intractable problem. If the plan were terminated today, it is incredibly unclear whether the PBGC would even look at the COLA that was removed in 1997 as a benefit payable under the plan. Even if they did, they would look at it as a benefit that would stop increasing at the time of termination. And even if they did that, they would still cut back the benefits payable to retirees on account of COLA beeause of a rule that says benefit increases that have been in effect for less than five years are not fully guaranteed.

* * *

THE COURT: And let me say on that because I mean it's one of the reasons that and I will say this for a reviewing court and if I'm wrong, so be it. But there may be as well be an honest statement by the district judge on this. One of the

reasons I said what I said to Mr. Wisehart when I came out is that as far as I am concerned and I am still subject to my finally understanding all of this. In terms of the process, in terms of the quality of the lawyering, in terms of the good faith that Mr. Hanrahan, Ms. Kraft and Mr. Johnson have put into this, it has been absolutely outstanding. They were confronted with a terrible, terrible problem in which the whole, everybody could have been hurt. The ship could have wrecked and nobody would have known what happened. There were problems of fairness. I think they have done an absolutely remarkable job based upon what I've read and hearing it one more time and that is one of the reasons—somebody wants to come in and object to a settlement, they've got a perfect right to do that and I take no offense at that at all. But to attack counsel who—I have been presiding over this and the Bobo proceedings. And although I haven't obviously been involved in the settlement here, I know how difficult the problems have been. I know how good the lawyering has been. I know that there's been no collusion among the lawyers. That in fact I know in terms of an objective fact that they were negotiating hard and in fact at one point despite their good faith in recognizing that a diplomacy was what was needed to try to save this ship of state for everybody, it might not work and they finally had to go to Judge Grimm who did a good job to help work out the differences. So in terms of the process here, I am absolutely convinced that they were first rate lawyers who absolutely were representing their clients vigorously and who did an outstanding job and I want to thank you all for doing this. Now whether or not at the end of the day, I'm going to approve what you did is going to depend upon —I'm inclined to do it. There's no question that I am. But I want to hear it one more time. But to attack the counsel in this case on a personal level for being collusive, I find offensive because they were absolutely in my judgment everything other than collusive. They were absolutely professional and I thank you.

* * *

THE COURT: Now the question is if you all think we should add something, we could break for lunch and come back at 2:00 or does that make sense to everybody so that we're not—

MS. KRAFT: That might be a good idea. Mr. Wolfe has traveled up from Florida and his situation is a little bit different and I think he'd like an opportunity to explain—

THE COURT: I understand. I would like to do something for Mr. Wolfe, too, but I'm not sure I can do it.

* * *

THE COURT: I'm still not, don't quite understand the issue because I'm not understanding why the, what happened in '97. Mr. DeWolfe focuses upon losing his COLA then, how that is impacting. I understand what Mr. Hanrahan has said. That it's the reductions after the COLA that he's been making—his benefits were reduced to "pay" for his wife's extended benefit because of her longer life expectancy.

MR. HANRAHAN: Let me try to illustrate this with an example which I think will give you the flavor of this. Let's assume his monthly benefit was $100 straight life annuity when he retired in 1991, began receiving an annuity. Look at his life expectancy, the life of expectancy of him and his wife and you make a reduction assuming no COLA's to $95 a month for him and she'll get half of that when he dies. In 1993, because the new actuary realized that there had never been an adjustment in those reduction factors and they went back and said the reduction should have been to $92.

THE COURT: Because of the COLA

MR. HANRAHAN: Because of the COLA.

THE COURT: So it's the 10% that was given plus the 10% every three years.

MR. HANRAHAN: Yeah. In 1997 when the COLA was removed from the plan, he reverted back to $95. What he's saying is that for every month during that period from '93 until near the end of '97, he was being overcharged, he had paid $3 for the COLA. That, you know, you can multiply that out and there's an amount of money that he says he paid for something that ultimately he's not going to get because the COLA was eliminated.

THE COURT: And the other people that would apply to are whom? Obviously, you have to have the joint survivors. You have to—

MR. HANRAHAN: That's right.

THE COURT: You have to have that. That's condition number one.

MR. HANRAHAN: And condition number 2 is that your benefit amount was readjusted in 1993 to take account of the COLA.

THE COURT: Right.

MR. HANRAHAN: And then in 1997 and this would have happened uniformly to this group of people, they reverted back to the old joint and survivor annuity factor that had nothing do with the COLA.

THE COURT: And these are people who retired in what window?

MR. HANRAHAN: From 1991 through October 31, 1997.

* * *

. . . [THE COURT]: I've heard it is a unique problem and—

MR. HANRAHAN: We'll do our best to resolve this as quickly as we can if it's possible to do.

THE COURT: And if it's not going to adversely affect anybody else, I'm not—it doesn't concern me particularly that it wasn't in the notice.

MR. HANRAHAN: Yeah. I don't really see how it's going to adversely affect anyone else.

* * *

THE COURT: Mr. DeWolfe, if I approve this at the end of the day, what we're going to do is to—I'm going to approve it tentatively subject to working it out. I can't give you any guarantees, but people are going to try to fix this.

* * *

MR. WISEHART: Your Honor said earlier that your decision would be subject to appeal and before the thing becomes effective.

* * *

THE COURT: No. I understand your position on this. Let me ask you a conceptual thing here. You are appropriately looking for the best avenue to essentially keep your clients' pension, to get it back to where it was when this COLA which should never have been given was. I appreciate that and that was in your view and your clients' view the fairest thing. But there are risks in that position that have been set forth by class representative and his counsel. But finally, when I have to judge overall fairness and tell me if I'm wrong, of course, I have to make sure that people aren't being treated unfairly vis-a-vis one another and there has to be general equity. Look, I wouldn't want to have had my pension reduced and for everything I've said, I understand Mr. Devlin's position on this and I feel bad for him. But I have previously found that the COLA should never have been given. But be that as it may, conceptually, assuming that somebody isn't being mistreated, my job finally is, is it not, today to decide overall fairness. And I can't for the life of me

see how in making that determination because this might be best for your client, that essentially, I should adopt an approach that would have this plan go up on the rocks. How could that possibly be fair to other people including the active class? How could that possibly be so to have this plan even if we could get a prompt determination where the result is that the plan hits the rock and goes and there's a distress termination?

MR. WISEHART: Well, that is a point that involves a matter of equity that I respectfully submit that Your Honor has not really focused on.

THE COURT: Well, what have I missed?

MR. WISEHART: The people who have retired have given their all. They have no further employment options. And it's not just the people who've retired and who will die shortly as was callously pointed out before, as Mr. Wolfe says, it's so their—it's Mr. Devlin's widow when that happens and we had a Mr. Clark, the oldest member of the RPA group who was 99 years old who just passed away last week. And what is at issue is the destruction of an entire lifestyle.

* * *

THE COURT: Well, there's been some heat during this hearing for which I know I've been in large measure responsible and I apologize if I've made it personally unpleasant for anybody. I certainly have not meant to. But these are difficult proceedings in which things can get out of control and unfocused and in which really major matters for all affected parties are at stake and I do not want to lose the forest for the trees. And in the final analysis, I am prepared to rule subject to hearing back from Mr. Hanrahan on the Mr. Wolfe issue.

I ultimately am called upon to determine whether the settlement that has been proposed is fair. And under the

Jiffy Lube case, I am to consider the following factors. The posture of the case at the time settlement was proposed. The extent of discovery that had been conducted at that time, the circumstances surrounding the negotiations and experience of counsel in the area of class action litigation and those four factors I am to consider in making what under Jiffy Lube is an essential inquiry whether the settlement was reached as a result of good faith bargaining at arm's length without collusion.

For all of the reasons set forth in the papers submitted by the plaintiff and the two classes and the two subclasses, the defendants, all of these, all of the Jiffy Lube factors make it clear that the settlement is a result of good faith bargaining at arm's length without collusion. As set forth in the papers, really the Bobo discovery and the findings I had made provided a factual basis for analysis of the desirability and the viability of settlement and we all know the findings that I did make there.

There are litigation risks for everybody even in light of my Bobo findings and I will not go through them all again. But number one, my finding that there had been a breach of fiduciary duty was one which could have been rechallenged and I guess there was a risk that on both sides as to how that would, you know, if that were determined, but I guess mainly by finding there would have been overturned, it would have been risk for the active, for the people. Excuse me. It's late in the afternoon. Of course, I've got two classes and two subclasses, number one. But essentially there's a litigation risk posed by that. There's the litigation risk concerning what finding would be made vis-à-vis my ruling on whether or not the 10% COLA had been an accrued benefit. There was a litigation risk that even if there was a breach of fiduciary duty whether or not I could fashion a remedy within the principles of equity and under the law that would undue that COLA. There was a collection risk that even if the retiree subclass

and the pre-January 1991 subclass had prevailed on everything, had overturned my finding about breach of fiduciary duty and/or hadn't been able to fashion relief to undue the COLA or if it had found to be the accrued benefit, there is a very realistic collection problem that they would have because the effects of all of their victories would have upon the viability, the financial viability of the plan. I'm absolutely unpersuaded that termination of this plan either voluntarily or by distress would have been in anybody's benefit. It would have just, would have been killing I can't say the golden good here because the goose may no longer be golden. But it would be absolutely destructive of everybody's rights and interests and I just think Mr. Wisehart is wrong about that and to steer the ship onto the rocks would be devastating for everybody.

There is absolutely no question in this case that counsel who negotiated the settlement are extremely experienced and extremely good as I said before. And they represented their clients to the fullest. Even today Ms. Kraft was trying to help Mr. Wolfe out again although recognizing that she was in a somewhat ambiguous position and Mr. Hanrahan, too. I mean negotiations were both hard-fought and they were fair and I could just see that from what was going on. I've known it frankly from dealing with counsel throughout this litigation. That they're not going to give an inch on something they shouldn't give an inch on because they're highly professional. On the other hand, they want to be fair. On Mr. Hanrahan's side if he sees a legitimate issue, he's going to try to respond to it consistent with his obligations to his client. And although Mr. Johnson and Ms. Kraft are fair and fairminded, they're not going to give up anything they shouldn't for their clients. So I'm absolutely persuaded of that. And I know also just objectively that however good they were and however hard they were trying, the settlement almost wasn't achieved because they had reached an impasse because of what they thought what their obligations to their clients and it

took the intervention of a or the assistance, I wouldn't say intervention, but the assistance that they called upon of an extremely able and conscientious magistrate judge to help them find a solution to the problem.

I'm absolutely persuaded that the settlement is adequate. I've been through the litigation risks that people faced which bear upon the five factors that are conventionally said to bear upon or the first two of the factors that are said to have bear upon the praise and the adequacy of the settlement, the relative strength of the case on the merits, the existence of any difficulties of proof or strong defenses. Third, we have here anticipated duration and expense of anticipated litigation. I think the plaintiffs point out that that may not be the strongest factor here, but there would be continued delay. The expense is probably not such a factor here. But there would be a continued delay and this is a problem which just cries to be solved now and it's been going on for so long. One of the reasons it's so difficult is because people had to try to take interim measures to keep the plan afloat which simply made the problem even more complicated and more difficult to resolve. If we went to another stage, another degree of complexity it might make it impossible to achieve any settlement at all no matter how, no matter how much it would be in everybody's interest to achieve it. So more delay wouldn't be to the benefit of the retiree class, particularly those who've retired before 1991. It's not cynical to say it. It's not callous to say it. It's a fact of life. And as I say, just more delay, more complexity would make it, might make it impossible ever to resolve this issue which cries for resolution. The degree of opposition of the settlement really, it is remarkable how little opposition has been expressed. The number of objectors is in the 20's. Is it 24?

MR. HANRAHAN: Twenty-four, Your Honor.

THE COURT: Twenty-four people. And that to me shows what a remarkable job counsel has done. There was fair

notice in this case. And the bottom line is that this settlement not only is extremely fair, it is a testament to the best of the best of what the law profession with the assistance of other professions can achieve. It is diplomacy in the highest sense of the word, not simply being nice to one another. But on resolving very difficult disputes on which they're legitimate, different perspectives in a constructive manner. And so this settlement is in my judgment is supremely fair and subject to hearing to try and to resolve this one remaining issue is one that I have absolutely no hesitancy in approving. Whether or not if this problem can't be worked out, I'm not saying I won't approve the settlement. I'm just hoping that the problem identified by Mr. Wolfe can be seen to be discreet and manageable both from a financial point of view and from a legal point of view and that he is not getting for himself and the people who he identified as having a similar problem something to which they aren't entitled in light of what everybody else is giving up. But as has been described today, it looks to me like it may be an isolated problem which is manageable and I have no problem with the fairness of the notice because if that is so, it is a unique problem and if what I've been told about the financial implications are such, to resolve that problem isn't going to have any impact upon the financial integrity of the plan which would otherwise impact upon the other people.

So counsel, I commend you. I thank you and subject to what I've said, I approve the settlement.

MR. HANRAHAN: Thank you, Your Honor.

(Proceedings concluded.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

MOTION OF PLAINTIFF TRUSTEES FOR A PRELIMINARY INJUNCTION PURSUANT TO THE ALL WRITS ACT

Plaintiff Trustees hereby move the Court, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), for a preliminary injunction barring defendant class members Robert J. Devlin, Andrew Hagan, Thomas Hewson, Frederick Rinckwitz, individually or through the Retired Employees Protective Association ("REPA") (of which Mr. Devlin is the President), as well as all other members of the defendant class, from prosecuting in any court, except this Court, the United States Court of Appeals for the Fourth Circuit, or the United States Supreme Court, claims which are addressed in the Settlement Agreement and Release this Court has provisionally approved, or which concern the conduct or resolution of the above-captioned litigation.

The relief we seek includes a prohibition on further proceeding on claims directly related to the instant action, including those contained in a Proposed Amended Complaint in the case captioned *Devlin, et al. v. TCU, et al.*, Nos. 95 Civ. 0742 and 95 Civ. 10838 (S.D.N.Y.) (Proposed Amended Complaint filed on July 9, 1999), and an Amended Complaint

filed on January 21, 2000, in the case captioned *Devlin, et al. v. Scardelletti, et al.*, No. 00 Civ. 0043 (S.D.N.Y.). Each of these pleadings raises claims which conflict directly with prior decisions of this Court and which would interfere with this Court's continuing jurisdiction over the settlement of this action. The latter case involves claims of more than $23-million against class counsel Barbara Kraft, Trustees' counsel William Hanrahan and his law firm, relating to their conduct in this case.

The requested relief is authorized by the All Writs Act as necessary and appropriate in aid of the Court's jurisdiction. *See In re March*, 988 F.2d 498 (4th Cir. 1993).

WHEREFORE, plaintiff Trustees respectfully request that this Court: (1) enjoin Messrs. Devlin, Hagan, Hewson and Rinckwitz, and REPA, to dismiss the pending action in the Southern District of New York captioned *Devlin, et al. v. Scardelletti, et al.*, No. 00 Civ. 43 (S.D.N.Y.), and to withdraw their motion to amend their complaint in the pending action captioned *Devlin, et al. v. TCU, et al.*, Nos. 95 Civ. 0742 and 95 Civ. 10838 (S.D.N.Y.) to the extent that motion raises claims concerning the 1991 COLA; (2) enjoin Devlin, Hagan, Hewson, Rinckwitz and REPA, as well as all members of the defendant class, from taking any action against counsel in this case, or their law firms; and (3) enjoin Devlin, Hagan, Hewson, Rinckwitz and REPA, as well as all members of the defendant class, from making any filing in any forum that raises issues disposed of here or that directly or collaterally attacks the settlement of this matter, except in this Court or on appeal from the Orders of this Court.

Respectfully submitted,

/s/ _____

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Attorneys for the Plaintiffs

January 31, 2000

CERTIFICATE OF SERVICE

I hereby certify that copies of the Plaintiffs' Motion For A Preliminary Injunction, the Memorandum In Support thereof, the Appendix thereto, and a proposed Order were sent on January 31, 2000, by overnight delivery service to:

ARTHUR M. WISEHART, ESQ.
WISEHART & KOCH
19 West 44th Street
Suite 412
New York, NY 10066-5993

KENNETH M. JOHNSON, ESQ.
TUGGLE, DUGGINS & MESCHAN, P.A.
228 West Market Street
P.O. Box 2888
Greensboro, NC 27402

TRAVIS M. MASTRODDI, ESQ.
KAHN, SMITH & COLLINS, P.A.
201 North Charles Street
10th Floor
Baltimore, MD 21201

and by messenger to:

BARBARA KRAFT, ESQ.
BEINS, AXELROD & KRAFT
1717 Massachusetts Avenue, N.W.
Suite 704
Washington, DC 20036

/s/ _____
Jeffrey A. Bartos

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*,
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

ORDER GRANTING PRELIMINARY INJUNCTION

This matter came before the Court on the motion of Plaintiff Trustees for a preliminary injunction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). Upon consideration of the motion, the memorandum in support thereof, and the opposition thereto, and upon finding that an injunction is necessary and appropriate in aid of this Court's jurisdiction, it is hereby

ORDERED, that the motion is GRANTED, and it is further

ORDERED, that Messrs. Devlin, Hagan, Hewson and Rinckwitz, and REPA, are hereby enjoined to dismiss the pending action in the Southern District of New York captioned *Devlin, et al. v. Scardelletti, et al.*, No. 00 Civ. 43 (S.D.N.Y.); and it is further

ORDERED, that Devlin, Hagan, Hewson, Rinckwitz and REPA, as well as all members of the defendant class, are enjoined from making any filing in any forum against any person, including counsel in this case or their law firms, that raises issues encompassed within the settlement of this action

or that directly or collaterally attacks the settlement of this matter, except in this Court or on appeal from the Orders of this Court.

IT IS SO ORDERED, this 1st day of March, 2000.

/s/ _____
J. Frederick Motz
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*
Plaintiffs,

v.

ANTHONY SANTORO, SR., *et al.*,
Defendants.

FINAL ORDER

This matter having come before the Court on the motion of the plaintiffs for approval of the settlement set forth in the Settlement Agreement and Release ("Settlement Agreement"), and the responses of the Defendant Class thereto, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed and good cause appearing therefor, it is

ORDERED, ADJUDGED AND DECREED THAT:

1. For purposes of settlement, the Defendant Class is defined to consist of all active, terminated vested and retired participants in the Transportation Communications International Union Staff Retirement Plan ("Plan") and their beneficiaries, except R.A. Scardelletti, Frank Ferlin, Jr., Joel Parker, Don Bujold, Howard Randolph, Mitchell M. Kraus, Donald A Bobo, R.I. Kilroy, F.T. Lynch and Frank Mazur; and the Defendant Class is divided into a Retiree Subclass made up of all members of the Defendant Class who retired or terminated service under the Plan prior to January 1, 1999, and their beneficiaries; and an Active Subclass, made up of all members of the Defendant Class who had not retired or terminated service under the Plan prior to January 1, 1999, and their beneficiaries.

2. The requirements to certify a class under Rule 23(b)(1) of the Federal Rules of Civil Procedure for purposes of settlement have been satisfied and the Defendant Class is certified for settlement purposes under Rule 23(b)(1) of the Federal Rules of Civil Procedure.

3. The notice given to the Defendant Class concerning the Settlement Agreement provided fair and reasonable notice to the Defendant Class of the nature of this action, the proposed settlement, and the right to appear and be heard concerning the proposed settlement and satisfied the order of this Court concerning notice to the Defendant Class and the requirements of Rule 23 of the Federal Rules of Civil Procedure.

4. The Settlement Agreement is approved and is, in all respects, fair, reasonable and adequate to the Defendant Class and all of its members in accordance with Rule 23 of the Federal Rules of Civil Procedure and was negotiated and entered into in good faith.

5. The amendment to the Plan adopted October 13, 1990 providing for an automatic cost of living adjustment effective January 1, 1991 is null and void as of its adoption and of no force or effect and Article 5.5(a) of the Plan document Restated to Reflect All Amendments Adopted Through March 3, 1999 is null and void and shall not be enforced.

6. Without affecting the finality of this Order, the Court retains jurisdiction over implementation and enforcement of the Settlement Agreement.

7. This action is dismissed with prejudice.

Dated: March 15, 2000

/s/ _____
J. FREDERICK MOTZ
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*

v.

ANTHONY SANTORO, SR., *et al.*

MEMORANDUM

The Fourth Circuit has remanded this action for the sole purpose of having me set forth my reasons for issuing an injunction under the All Writs Act in accordance with Fed. R. Civ. P. 65.

The reason for my issuance of the injunction is that Robert Devlin has, by his pattern of conduct, demonstrated that unless he is enjoined, he will institute litigation in other districts to undermine the class action settlement this court has approved (a ruling that has now been affirmed by the Fourth Circuit).[10] This pattern is evidenced by other cases that Devlin filed both before and after the settlement agreement was approved while this action was pending. After I ordered recission of the 1991 COLA, Devlin filed two actions in the Southern District of New York, seeking a preliminary injunction to restore the COLA. The New York court denied the motion, finding that this court was the proper forum in which such a motion should be filed. The Second Circuit affirmed. Thereafter, Devlin sought to amend his

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[10] Devlin has been joined in the litigation he has instituted by other members of the retiree subclass. I will refer to this group collectively as "Devlin."

complaint in the New York actions to reassert the same COLA claims previously raised and rejected. In the proposed amended complaint Devlin claimed that "the entire proceeding in Maryland" had been "tainted." The New York court denied the motion for leave to amend.

After this court had granted preliminary approval to the settlement agreement, Devlin sought to intervene. I denied the motion to intervene as untimely but Devlin and his counsel did attend the fairness hearing. Devlin appealed my denial of his motion to intervene and my approval of the settlement agreement. My rulings were affirmed by the Fourth Circuit on appeal.

Notwithstanding my approval of the settlement agreement, while the approval was pending, Devlin instituted another action in the Southern District of New York alleging that the prosecution of the present suit by the Trustees was a breach of their fiduciary duties and that the settlement of this litigation was the product of collusion. Self-evidently, the institution of that action constituted an attack upon my approval of the settlement agreement and was an attempt to circumvent the jurisdiction not only of this court but also of the Fourth Circuit in which the appeal of my rulings was to be heard.

It was against the background of these lawsuits that on March 15, 2000, I entered an injunction requiring Devlin to dismiss the breach of fiduciary complaint in the Southern District of New York. Even then, Devlin did not comply with the injunction but instead moved for reconsideration of the Southern District's decision in the original New York actions denying leave to file an amended complaint. Only after I advised Devlin that his failure to comply with my injunction would subject him to contempt did he withdraw the breach of fiduciary complaint and his motion for reconsideration in the original actions.

"The All Writs Act empowers a federal court to enjoin parties before it from attempting to relitigate decided issues and to prevent collateral attack of its judgments." *In re March*, 988 F.2d 498, 500 (4th Cir. 1993); *see also United States v. Cohen*, 152 F.3d 321, 325 (4th Cir. 1998) ("where an injunction is proper in order to protect or effectuate the judgments of a federal court, it is within that court's power to issue the injunction under the All Writs Act."). Here, Devlin's actions clearly were an attempt to relitigate issues I had decided and to collaterally attack my rulings, including my approval of the settlement agreement. Nothing short of an injunction (and, as it turned out, the threat of the imposition of contempt sanctions) deterred him from his conduct. Moreover, he has suffered no cognizable harm as the result of the issuance of the injunction since, as both the United States District Court for the Southern District of New York and the Second Circuit have recognized, this court is the only appropriate forum for him to challenge, directly or indirectly, the class action settlement agreement.

A separate order re-issuing the March 15, 2000 injunction is being entered herewith.[11]

Date: November 20, 2001

/s/ _____
J. Frederick Motz
United States District Judge

[11] The preliminary injunction I entered on March 15, 2000 required that Messrs. Devlin, Hagan, Hewson, Rinckwitz, and REPA were enjoined to dismiss their breach of fiduciary complaint in the Southern District of New York. In light of the fact that that action has now been dismissed, the accompanying preliminary injunction order deletes that clause.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. JFM-97-3464

R.A. SCARDELLETTI, *et al.*

v.

ANTHONY SANTORO, SR., *et al.*

ORDER GRANTING PRELIMINARY INJUNCTION

This matter came before the Court on the motion of Plaintiff Trustees for a preliminary injunction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). For the reasons stated in the accompanying memorandum, it is hereby

ORDERED, that the motion is GRANTED; and it is further

ORDERED, that Devlin, Hagan, Hewson, Rinckwitz, and REPA, as well as all members of the defendant class, are enjoined from making any filing in any forum against any person, including counsel in this case or their law firms, that raises issues encompassed within the settlement of this action or that directly or collaterally attacks the settlement of this matter, except in this Court or on appeal from the Orders of this Court.

IT IS SO ORDERED, this 20th day of November 2001.

/s/ _____
J. Frederick Motz
United States District Judge